

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 90

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BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR  
GRAIN COMPANY, GEORGE A. HELLMAN, ET AL., PETI-  
TIONERS,

E. E. JOHNSON, TRUSTEE IN BANKRUPTCY OF WILSON F.  
HENDERSON.

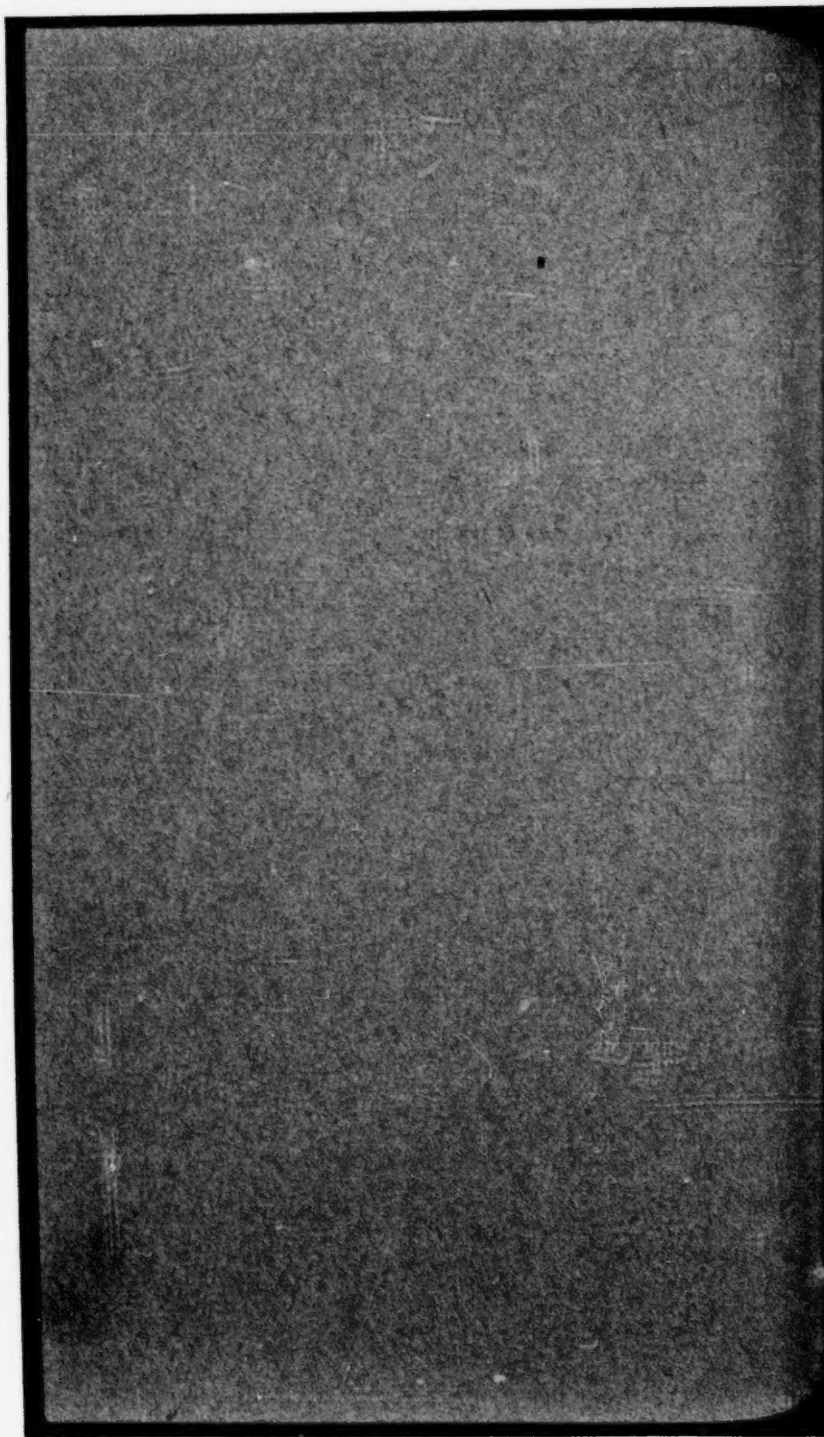
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WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

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RECEIVED BY THE CLERK OF THE COURT

OCTOBER 10, 1923



(29,063)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 513.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR  
GRAIN COMPANY, GEORGE A. HELLMAN, *ET AL.*, PETI-  
TIONERS,

*v.s.*

E. H. JOHNSON, TRUSTEE IN BANKRUPTCY OF WILSON F.  
HENDERSON.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Seventh  
Judicial Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

*Petition for Review under Section 24b of the Bankrupt Act.*

Filed Aug. 12, 1921.

To the Honorable Judges of said Circuit Court of Appeals:

Your petitioners, Board of Trade of the city of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., bring this petition for review against E. H. Johnson, who was duly appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division (and is now acting) trustee in bankruptcy of the Estate of Wilson F. Henderson, who had been theretofore and on the 24th day of February, 1920, adjudged a bankrupt by said court, and represent:

1. Said Board of Trade of the city of Chicago is a corporation existing under a special charter granted to it by the state of Illinois, and it is under said charter maintaining a commercial exchange in the city of Chicago; that said Armour Grain Company is a corporation engaged in the purchase and sale of grain and is, under the rules of said Board of Trade, entitled to all the rights and privileges accorded to individual members of said Board; that said George S. Bridge and John R. Leonard are members of said Board of Trade and transacting business thereon as Bridge & Leonard; that James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller are members of said Board and transacting business thereon as James E. Bennett & Co.; that George A. Hellman is a member of said Board and transacting business on said exchange;

2. That on the 24th day of January, 1920, a petition was filed in said District Court of the United States for the Northern District of Illinois, Eastern Division, to have one, William F. Henderson, adjudged a bankrupt, and that thereafter and on the 24th of February, 1920, said court, did adjudge said Henderson a bankrupt, and that on the 30th day of March, 1920, E. H. Johnson was, at the first meeting of creditors, duly appointed trustee in bankruptcy of the estate of said Wilson F. Henderson; that on, to-wit, the 10th day of June, 1920, said Johnson as trustee filed in

said District Court his petition alleging that said Wilson F. Henderson was a member in good standing of said Board of Trade of the city of Chicago, that said membership was of the approximate value of ten thousand five hundred (\$10,500) dollars, and praying that said Board of Trade show cause why said membership of said Henderson should not be transferred to said trustee and why he should not be allowed to transfer the same free from any claims of certain members of said Board of Trade; and these petitioners ask that the copy of said petition contained in the transcript of record of the said District Court herewith filed in this court be treated as a part of this petition as fully as if the same were herein fully set out.

3. That on the 10th day of June, 1920, an order was entered by said court pursuant to the prayer of said petition. That on the 16th day of June, 1920, said Board of Trade in answer to said rule to show cause filed its plea to the jurisdiction of said District Court upon the ground that said petition created a controversy in bankruptcy as distinguished from a proceeding in bankruptcy and that said Board of Trade objected to the exercise by said court of jurisdiction of said petition, a copy of which plea to the jurisdiction is contained in said transcript of record herewith filed, and these petitioners ask that it may be treated as a part of this petition as fully as if set forth herein in full; that on the 2d day of May, 1921, said court overruled said plea; that on the 25th day of July, 1921, your petitioners, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, filed their plea the jurisdiction of said court upon the same grounds alleged in said plea of the Board of Trade to said jurisdiction, a copy of which plea is also included in the transcript of record of the said District Court, and your petitioners ask that it be treated as a part of this petition as fully as if set forth herein in full; that on the 25th day of July, 1921, said court entered its order overruling said plea; that on the 25th day of July, 1921, said Johnson, Trustee, by leave of court, filed an amendment and supplement to his said petition, averring that your petitioner,

3 said Bridge & Leonard, had on June 17, 1921, instituted a proceeding before the Board of Directors of said Board of Trade to have said Henderson suspended from the privileges of membership, and also making Armour Grain Company, George A. Hellman, Bridge & Leonard, and James E. Bennett & Co. as parties respondent to his said petition, a copy of which amendment and supplement is contained in said transcript of record, and these petitioners ask that the same may be treated as a part of this petition as fully as if herein set forth in full; that on the 25th of July, 1921, the Board of Trade filed its answer to said amended petition of said trustee, and on the same date your petitioners, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, also filed their answer to said petition of said trustee, copies of which answers are contained in said transcript, and these, your

petitioners, ask that the same be taken as a part of this petition as fully as if set forth at length herein.

4. That thereafter the said proceeding came on for final hearing in said District Court upon said petition as amended and answers 1921, entered in said court a final order granting the prayer of said (as upon bill and answer), and said court on the 27th day of July, petition, a copy of which order appears in the transcript of record made an exhibit to this petition, and your petitioners ask that such order may be regarded as a part of this petition as fully as if set forth at length herein.

5. That said District Court in entering said order and finally disposing of said proceedings erred in the following respects:

(1) In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction;

(2) In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belongs to the said E. H. Johnson as trustee in bankruptcy;

(3) In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board;

4 (4) In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, unadjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;

(5) In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

(6) In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

(7) In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

(8) In holding that the claim of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

(9) In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

(10) In adjudging that the proceedings for the suspension of said Henderson filed on June 17, 1921, were unavailing and invalid and did not constitute an impairment of said membership as against said trustee;

(11) In adjudging that said membership of said Henderson now belongs to said trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said trustee should hold same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairments or otherwise as against said Henderson;

(12) In adjudging that the claims of these respondents were valid as against the membership of said Henderson and the rights of said Johnson as trustee;

(13) In entering the decree ordering that respondent, Board of Trade of the City of Chicago, disallow and refuse to recognize any purpose as against said trustee the said claims mentioned in said answer of the respondent, Board of Trade, and in ordering that said Board of Trade shall not allow any other claims or proceedings, objections, liens or otherwise against said trustee upon or against said membership of said Henderson;

(14) In directing said Board of Trade to disregard and dismiss the proceedings of the respondent, Bridge & Leonard, for the suspension of said Henderson and take no action upon said proceedings which would impair or forfeit that membership;

(15) In ordering the Board of Trade to permit the transfer of said membership upon the application of the trustee but of no other person;

(16) In ordering said trustee to sell and dispose of said membership for the benefit of said estate;

(17) In directing the Board of Trade to recognize, accept and enter upon its records said E. H. Johnson, Trustee, as the owner of said membership of said Henderson;

(18) In not dismissing the petition of the trustee.

Your petitioners file herewith a duly authenticated transcript of the proceedings above mentioned in said District Court and ask that the same be taken and treated as an exhibit to this petition.

Wherefore, your petitioners pray that this court may review, revise and reverse said order of said District Court and direct said District Court to dismiss said petition of said Johnson.

BOARD OF TRADE OF THE CITY OF  
CHICAGO,

ARMOUR GRAIN COMPANY,

GEORGE A. HELLMAN,

GEORGE S. BRIDGE,

JOHN R. LEONARD,

JAMES E. BENNETT,

FRANK J. SAIBERT,

FRANK F. THOMPSON,

FRANK A. MILLER,

By ROBBINS TOWNLEY & WILD,

*Their Solicitors.*

(Endorsed:) No. 3028. In the United States Circuit Court of Appeals for the Seventh Judicial Circuit Board of Trade of the City of Chicago, a corporation, et al., vs. E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson. Petition for Review. Filed Aug. 12, 1921. Edward M. Hallaway, Clerk. Robbins, Townley & Wild, 105 South La Salle street, Chicago.

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*Placita.*

EXHIBIT TO PETITION TO REVIEW AND REVISE.

Filed Aug. 22, 1921. Edward M. Hallaway, Clerk.

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on 29th day of July, in the year of our Lord one thousand nine hundred and 21, being one of the days of the regular July Term of said Court, begun Monday, the 4th day of July, and of our Independence the 146th year.

Present:

Honorable Kenesaw M. Landis.

John J. Bradley, U. S. Marshal.

John H. R. Jamar, Clerk.

*Creditors' Petition Filed Jan. 24, 1920.*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Be it remembered that heretofore, to-wit: on the 24th day of January, 1920, came the Trustee of the above named Bankrupt and filed his petition, as follows:

Form No. 3.

Creditors' Petition.

To the Honorable ———, Judge of the District Court of the United States for the Northern District of Illinois:

The Petition of M. W. Chouinard respectfully shows:

That Wilson F. Henderson, of Chicago Illinois, has for the greater portion of six months next preceding the date of filing this petition resided at Chicago, in the County of Cook, and State and District of Illinois, aforesaid, and owes debts to the amount of \$1,000.

7 That Your Petitioner is a creditor of said Wilson F. Henderson having provable claims amounting in the aggregate in excess of securities held by them to the sum of \$500. That the nature and amount of your petitioner's claim is as follows: A judgment in the Circuit Court of Cook County for the sum of \$1,500. and costs on which there is a balance due of over Six Hundred Dollars \$600.00.

And Your Petitioner Further Represents that said Wilson F. Henderson is insolvent, and that within four months next preceding the date of this petition the said Wilson F. Henderson committed an act of bankruptcy, in that he did heretofore, to wit, on the 22nd day of December A. D. 1919 and on various other dates allow Execution to be returned against him, unsatisfied.

And your Petitioner further represents that said Wilson F. Henderson has less than 12 Creditors.

Wherefore Your Petitioners Pray- that service of this petition, with a subpoena, may be made upon Wilson F. Henderson, as provided by the acts of Congress relating to bankruptcy, and that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

M. W. CHOUINARD,  
*Petitioners.*

JULIUS A. QUASSA,  
*Attorney.*

\*Insert here the words "had his principal place of business" or "resided" "had his domicile."

UNITED STATES OF AMERICA,  
Northern District of Illinois, ss:

M. W. Chouinard being *three* of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by them are true.

Before me, ———, this 22nd day of January 1920.

[SEAL.]

MAY F. MONAHAN,

Notary Public.

(Official Character.)

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(Endorsed:) Filed Jan. 24, 1920, John H. R. Jamar, Clerk.

(Endorsed:) Docket No. 28256. United States District Court, Northern District of Illinois, In Bankruptcy. In the Matter of Wilson F. Henderson of Chicago, County of Cook, State of Illinois. Creditors' Petition. Filed Jan. 24, 1920, at 11.20 o'clock A. M. John H. R. Jamar, Clerk. Julius H. Quassa, Attorney for Petitioner.

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*Order of Adjudication of Feb. 24, 1920.*

And on to-wit: the 24th day of February, 1920, there was entered the following order of Adjudication, in words and figures following to-wit:

In the District Court of the United States for the Eastern Division,  
Northern District of Illinois.

Tuesday, February 24, A. D. 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

In Bankruptcy.

No. 28256.

In the Matter of WILSON F. HENDERSON, Bankrupt.

At Chicago, in said District, on the 24th day of February, A. D. 1920, before the Honorable ———, Judge of said Court in Bankruptcy, the petition of M. W. Chouinard that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Wilson F. Henderson is hereby declared and adjudged a bankrupt accordingly.



*Order of Apr. 1, 1920, Approving Trustee's Bond.*

## Order Approving Trustee's Bond.

At a Court of Bankruptcy Held in and for the Northern District of Illinois, at Chicago, This 1st Day of April, 1920.

Before Sidney C. Eastman, Referee in Bankruptcy.

In the District Court of the United States for the Northern District of Illinois.

In Bankruptcy.

No. 28256.

In the Matter of WILSON F. HENDERSON, Bankrupt.

It Appearing to the Court that Elwyn H. Johnson of Chicago, and in said district, has been duly appointed trustee of the estate of the above named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by

(<sup>1</sup>) the creditors, to wit, in the sum of One Hundred dollars,  
9 it is ordered that the said bond be, and the same is hereby,  
approved. SIDNEY C. EASTMAN,

*Referee in Bankruptcy.*

(Endorsed:) Filed April 2, 1920, John H. R. Jamar, Clerk.

*Petition of Trustee.*

Filed June 10, 1920.

And on to-wit: the 10th day of June, 1920, there was filed in the Clerk's office of said court a certain Petition, in words and figures following to-wit:

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*

In the District Court of the United States, Northern District of Illinois.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

The petition of E. H. Johnson of the City of Chicago, Cook County, Illinois, respectfully represents that heretofore, on to-wit:

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(<sup>1</sup>) Here insert the words "the creditors," or "order of the court."

the 24th day of January, 1920, an involuntary petition in bankruptcy was filed in this court against the above named Wilson F. Henderson; that thereafter on the 24th day of February, A. D. 1920, said Wilson F. Henderson was duly adjudicated a bankrupt and the matter was referred to the Honorable Sidney C. Eastman, one of the referees in bankruptcy in and for said District; that at the first meeting of creditors duly called and held in said matter on the 30th day of March, 1920, your petitioner was duly elected trustee of said Wilson F. Henderson, qualified in all things as such, and has ever since said time, and still is, the duly elected, qualified and acting trustee of said estate.

Your petitioner further shows that during all of the time and times hereafter stated, the Board of Trade of the City of Chicago was a duly incorporated and existing corporation organized under and by virtue of the laws of the State of Illinois and doing business in the

City of Chicago, County of Cook and State of Illinois; that on  
10 to-wit: the first day of November, 1899, the above named

Wilson F. Henderson was duly elected a member of the Board of Trade of the City of Chicago and was at the time of the filing of said petition against him and of his adjudication in bankruptcy and of the election of your petitioner, as aforesaid, a member in good standing of the said Board of Trade of the City of Chicago.

Your petitioner further shows that said Board of Trade of the City of Chicago, as it was authorized and empowered by its charter to do, from time to time, adopted rules and regulations governing its members and membership therein and the transfer thereof; that among such rules and regulations duly in force at the time of said petition and adjudication and the election of your petitioner, there were the following which are all of the rules and regulations of said Board applicable or material to the matters herein involved, to-wit:

Rule X.—“Section 1. All applications for membership in the Association shall be referred to the Committee on Membership, who shall hold regular stated meetings for examining such applicants and their sponsors, in person, under such rules and regulations as may be made by the Board of Directors. Any male person of good character and credit, and of legal age, on presenting a written application, indorsed by two members, and stating the name and business avocation of the applicant, after ten days' notice of such application shall have been posted on the bulletin of the Exchange, may be admitted to membership upon approval by at least ten (10) affirmative ballot votes of the Board of Directors; provided, that three negative ballot votes are not cast against such applicant, and upon payment of an initiation fee of twenty-five thousand dollars, or on presentation of an unimpaired or unforfeited membership, duly transferred, and by signing an agreement to abide by the Rules, Regulations and By-laws of the Association, and all amendments that may be made thereto.”

“Section 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by

members of this Association, and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty dollars, to any person eligible to membership who may be approved

- for membership by the Board of Directors, after due notice by  
 11 posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the Bulletin of the Exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him \* \* \*."

Rule XXII.—"Sec. 11. No member shall give the name of a corporation as his principal on any trade or contract in any of the commodities bought and sold on this Exchange, as enumerated in Sections 4 and 5 of Rule XIV, unless two executive officers of such corporation, bona fide and substantial stockholders, are members of this association in good standing. In case the said corporation is accepted as a party to such trade or contract and defaults in the execution of the same, or fails to comply with the terms of any business obligation made in conformity with the rules and regulations of this Association on which the said corporation has become liable, the said executive officers, and such other officers and managers of such corporation as are members of this Association, shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own."

That no rule exists giving to said Board of Trade or its members the right to compel sale or other disposition of memberships to pay debts of particular members, or reserving to said Board of Trade or its members any right of application of a membership against the will of a member, for the benefit of his creditors; that the only right of one member upon a claim against another member under the rules of the Board of Trade is to prevent the transfer of the membership of such debtor member until such claim is settled, by the filing of an objection to such transfer.

Your petitioner further shows that the membership of said Wilson F. Henderson has been since the 24th day of January, 1920, and still is, of the approximate value of ten thousand five hundred dollars (\$10,500), as your petitioner is informed and believes, and was not at said time in any way impaired or forfeited; and all assessments then due on said certificate *has* been paid.

- Your petitioner further shows that pursuant to application duly made and signed by the said Wilson F. Henderson to the  
 12 said Board of Trade of the City of Chicago, notice and application for a transfer of his membership was posted upon the Bulletin of the Exchange on or about to-wit: May 1, 1919; that pursuant thereto and within ten days thereafter, certain claims, objections, or charges were made and filed against the said Wilson F. Henderson and against the transfer of said membership, but, as your petitioner is informed and believes, all such claims, objections or

charges were disposed of, or withdrawn prior to the said 24th day of January, 1920, so that upon said day, there were pending no outstanding unadjusted or unsettled claims or contracts held by members of said association which had been filed with said association within ten (10) days after the posting of such application for transfer; that on said day there was, however, in the hands of the officers of said association a certain claim or objection filed, as your petitioner is informed and believes, on the 27th day of May, 1919, by and in favor of the Board of Trade Clearing House, in the sum of five dollars and five cents (\$5.05).

Your petitioner further shows that subsequent to said 24th day of January, 1920, to-wit: on the 29th day of January, 1920, there were, as your petitioner is informed and believes, filed with and received by the said Board of Trade of the City of Chicago, and after knowledge by it of the filing of said involuntary petition of bankruptcy, three objections to the transfer of the membership of said Wilson F. Henderson respectively by and in favor of Armour Grain Company, George A. Hellman and J. E. Bennett & Co. said to be creditors of Lipsey & Co., a corporation, of which the said Wilson F. Henderson was an officer and director; that the said objections were not on account of any indebtedness due from the said Wilson F. Henderson personally; that if said persons and companies had any claims whatsoever, they were against the said Lipsey & Co., a corporation, and have been filed and received under the pretended authority of said Section 11 of Rule XXII.

Your petitioner further shows that in and by the schedules filed herein by the said Wilson F. Henderson, the said Henderson shows, among his assets, his membership in said Board of Trade of the City of Chicago, but, subject, however, to a claim in favor of said Lipsey & Company, a corporation; that said membership had not been transferred to said corporation and could not be so transferred under the rules and regulations of said Board of Trade of the City of Chicago, but, if said Lipsey & Company had any claims

13    whatsoever against said membership, it could only be by virtue of an equitable assignment and lien, which your petitioner in nowise admits, to secure a claim in favor of said Lipsey & Co. against Wilson F. Henderson; your petitioner shows, however, that the said Wilson F. Henderson likewise states in his schedules that said assignment was made to said corporation to secure the losses sustained by him and due to said corporation on account of speculation or gambling transactions; wherefore, your petitioner is informed and believes such claim or demand by said corporation against Wilson F. Henderson would be and is null and void and entirely unenforceable and said Lipsey & Company would have and has no claim or demand whatsoever as against said membership in the Board of Trade of the City of Chicago.

Your petitioner further shows that said Board of Trade of the City of Chicago, by its officers and attorneys, has, as your petitioner is informed and believes, denied the rights of your petitioner in and to said membership, and alleges and claims that the objections, claims and demands of said Armour Grain Company, George A.

Hellman and J. E. Bennett & Co., and all other creditors and claimants of Lipsey & Company, a corporation, being members of said Board of Trade of the City of Chicago are a preferred claim and lien upon said membership under said Section 11 of Rule XXII of the Rules and Regulations of the said Board of Trade of the City of Chicago, as above set forth; that said Board of Trade proposes and threatens a transfer of said membership in disregard of the rights of your petitioner therein, and to pay the proceeds obtained from the sale and transfer thereof to the said creditors of Lipsey & Company, a corporation, who are members of said Association, to the entire exclusion of your petitioner. Your petitioner further says that such action would be a fraud upon the rights of your petitioner; and that the action of said Board of Trade of the City of Chicago in receiving and recognizing as valid the said objections to the transfer of said membership, after the knowledge of the filing of said petition in bankruptcy, likewise constitutes a fraud upon the rights of your petitioner and that such objections or claims should be wholly disregarded and that the rights of your petitioner should be recognized and protected.

Your petitioner further states that he is advised by his counsel and he now so claims, that under the Bankruptcy Act of the United States, the said membership is an asset which passed to him as said Trustee, and that he is entitled to said membership and

14 to the value thereof to be disposed of for the benefit of all of the creditors of the said Wilson F. Henderson:

Wherefore, your petitioner prays that an order may be made and entered requiring the said Board of Trade of the City of Chicago to show cause, if any there be, why the said membership in said organization now standing in the name of the said Wilson F. Henderson should not be transferred to said petitioner as trustee of said Wilson F. Henderson, or why the rights of your petitioner should not be in some other way appropriately recognized for the benefit of said estate and for the purpose of a sale thereof; why your petitioner as such trustee should not be allowed to dispose of the same free and clear of any of any objections and claims whatsoever; why the said claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Company, and Board of Trade Clearing House should not be wholly ignored; and why your petitioner should not have such other and further relief as may be just and equitable.

E. H. JOHNSON,  
*Trustee.*

STATE OF ILLINOIS,  
County of Cook, ss:

E. H. Johnson, being first duly sworn, on oath says, that he is the petitioner above named; that he has read the above and foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, excepting as to those matters therein stated to be on information and belief, and as to those he believes it to be true.

(Signed)

E. H. JOHNSON.

Subscribed and sworn to before me this 9th day of May, A. D. 1920.

[SEAL.]

FRIEDA SCHUER,  
Notary Public.

(Endorsed:) Filed June 10, 1920. John H. R. Jamar, Clerk.

And on to-wit: the 10th day of June, 1920, there was entered the following order to-wit:

15 *Order of June 10, 1920, to Show Cause.*

UNITED STATES OF AMERICA,  
State of Illinois, ss:

In the District Court of the United States, Northern District of Illinois.

Thursday, June 10, 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Upon the reading and filing of the annexed verified petition and upon all of the records, processes and proceedings herein, and upon motion of Kraft, Kraft and Erskine, Attorneys for E. H. Johnson, Trustee,

It is Ordered, that the Board of Trade of the City of Chicago, show cause, if any they have, before me at my Court Rooms in the Federal Building, in the City of Chicago, County of Cook, State of Illinois, on the 25th day of June, A. D. 1920, at 10 o'clock, A. M., of said day, or as soon thereafter as counsel can be heard, why the membership in said organization now standing in the name of Wilson F. Henderson, the bankrupt herein, should not be transferred to said E. H. Johnson as Trustee of the Estate of said Wilson F. Henderson, or why the rights of the petitioner should not be in some other way appropriately recognized by it for the benefit of said estate and for the purpose of a sale of said membership; why the said Trustee should not be allowed to dispose of the said membership free and clear of any objections and claims whatsoever; why the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and the Board of Trade Clearing House now on file with it, should not be wholly ignored; and why said H. E. Johnson as such Trustee should not have such other and further order or relief as to said Board of Trade of the City of Chicago, as may be just and equitable.

Let a copy of this order, together with a copy of the annexed verified petition be served upon said Board of Trade of the City of Chicago, Armour Grain Company, George H. Hellman, J. E.

Bennett & Co. and Board of Trade Clearing House, at least ten (10) days before the time fixed for the hearing hereon.

16 It Is Further Ordered that said parties shall file answer to said petition of the trustee not less than five (5) days before the day fixed for the hearing hereon.

Enter:

\_\_\_\_\_  
Judge.

Dated this 10th day of June, A. D. 1920.

*Plea of Board of Trade of the City of Chicago.*

Filed June 16, 1920.

And on to-wit: the 16th day of June, 1920, there was filed in the Clerk's office of said court a certain Plea, in words and figures following to-wit:

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Petition of E. H. Johnson, Trustee of said Henderson.

Plea to the Jurisdiction of the Court.

The Board of Trade of the City of Chicago, respondent in the above petition, appears herein for the sole purpose of pleading to and denying the jurisdiction of this court to entertain the petition of E. H. Johnson, Trustee of said Henderson, filed herein on the 10th day of June, 1920, against this respondent, or to enter an order as prayed in said petition, or any order interfering with the control and disposition of the membership of Wilson F. Henderson in accordance with the rules and by-laws of this respondent, and this respondent, not waiving its objection to the jurisdiction of this court as aforesaid, and for the sole purpose of supporting its said objection, avers:

That this respondent is organized under a special charter granted to it by the State of Illinois on the 18th day of February, 1859, and that by its said charter there was granted to this respondent  
17 ent the right to admit and expel such persons as it might see fit, in manner to be prescribed by its rules, regulations and by-laws, and the power to make such rules, regulations and by-laws from time to time as it might think proper or necessary.



for the government of said corporation, not contrary to the laws of the land, and also power to establish such rules, regulations and by-laws for the management of the business of its members and the mode in which it shall be transacted, as this respondent might think proper.

That pursuant to the powers thus conferred, the members of this respondent, prior to the 1st day of November, 1899, adopted, in addition to Rules X and XXII set out in said petition, the following rules, all of which are still in full force and effect:

#### Rule I.

"Section 1. The government of the Board of Trade of the City of Chicago, and the control and management of its Real Estate (including all of the authority and power heretofore vested in the Board of Real Estate Managers), are hereby vested in a President, two Vice-Presidents, and fifteen Directors, who, including the President and Vice-Presidents, shall be known as the Board of Directors, all of whom shall have been members of the Association for at least one year next preceeding their election. The President, one Vice-President, and five Directors shall be elected annually. The President shall hold his office for the term of one year, or until his successor is elected and qualified; the Vice-Presidents, in like manner, shall hold their offices for the term of two years, and the Directors, in like manner, for the term of three years. Ten members of Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, to any fixed date preceding the next regular meeting of said Board."

#### Rule IV.

"Section 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation, or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen (15) days prior to the hearing of such application by the Board of Directors. \* \* \*

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regula-

tions and by-laws of the Association, he shall be suspended from all the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with. \* \* \*

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct, or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed by one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, if the charges apply to the firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be considered sufficient, and the examination may proceed whether the accused is present or not."

That said Henderson was admitted to membership in this respondent on the 1st day of November, 1899, and that at the time of his said admission and in order to secure the same, said Henderson signed and delivered to this respondent his written agreement to abide by the rules, regulations and by-laws of this respondent, and all amendments that might be made thereto.

That for many months prior to March 1, 1919, said Henderson was the president and one of the principal stockholders in a corporation known as Lipsey & Company, whose business was the buying and selling of grain for present and future delivery upon the Exchange of this respondent, and that by reason of said Henderson being such president and stockholder, said corporation was under Section 11 of Rule XXII aforesaid, entitled to have itself accepted as a party to, or principal in, trades and transactions made by it upon said Exchange of this respondent, and that for many months prior to March 1, 1919, said Lipsey & Company, through said Henderson as its president and its active executive officer, was engaged in making contracts for present and future delivery upon the exchange of this respondent and said Henderson had caused the name of said corporation to be given as a principal in and party to all of said trading; that in March 1919 said Lipsey & Company became insolvent and ceased to transact business, being then indebted on business obligations, made by it in conformity with the rules and regulations of this respondent, to the following persons, firms and corporations—said individuals and the partners in said firms being members of said Board of Trade, and said corporations being entitled to the privilege of trading on said Exchange—in the amounts hereinafter set opposite their respective names:

Armour Grain Co. ....	\$13,699.43
W. P. Anderson & Co. ....	173.44
Bridge & Leonard ....	606.04
E. W. Bailey & Co. ....	628.91
J. E. Bennett & Co. ....	2,407.27
Bartlett Frazier & Co. ....	73.75
Chicago Board of Trade ....	42.35
Carhardt, Code, Harwood Co. ....	390.03
Clement, Curtis & Co. ....	210.20
S. J. Feeney ....	211.25
Geo. Forbes ....	107.50
Geo. A. Hellman ....	42,600.00
F. W. Hotchkiss ....	447.00
Logan & Bryan ....	216.49
Lamson Bros. & Co. ....	54.43
F. S. Lewis & Co. ....	270.83
Lowitz & Co. ....	95.12
Lynch & McKee ....	92.69
J. F. Morton ....	2.80
J. P. Malloy ....	273.12
Sam Mincer ....	9.60
20 Norris Grain Co. ....	111.44
E. D. Norton ....	254.39
J. Rosenbaum Grain Co. ....	301.78
Riordan, Martin & Co. ....	527.50
Simons, Day & Co. ....	141.31
Sawyers Grain Co. ....	108.12
Seoville & Wing ....	223.76
A. O. Slaughter & Co. ....	141.25
Thomson & McKinnon ....	161.34
G. B. Van Ness & Co. ....	777.23
Ware & Leland ....	71.68
E. J. Young ....	94.25

And that said Armour Grain Company, George A. Hellman and J. E. Bennett & Co. have already duly filed with this respondent their objections to the transfer of the membership of said Henderson, and that each and every of said claims above enumerated is still owing and unpaid and constitutes an outstanding unadjusted and unsettled claim held by members of said Board of Trade with the meaning of Section 2 of Rule X above set out, and that said membership of said Henderson is not transferable under said rules until all of said claims are paid or until all of said persons, firms and corporations shall consent thereto, and none of said persons, firms or corporations have consented to the transfer of said membership, and by reason thereof this respondent is without power to, and is unwilling to, transfer said membership as prayed in said petition.

That there is no rule, regulation or by law of this respondent under or by which a member of this respondent to whom another of its members is indebted may cause the membership in this re-

spondent of said debtor member to be sold to pay such debt, and that this respondent is advised by its counsel, and therefore claims, that under the charter of this respondent and the laws of the State of Illinois as construed by its courts, a membership in this respondent is neither property nor subject to sale on execution or other legal process issued by a creditor of such members for the purpose of securing the payment of any debt due from a member of this respondent to such creditor, and also that said membership is not an asset in bankruptcy under the Federal Bankruptcy Act, and that when a member of this respondent is adjudged a bankrupt under said law, his trustee in bankruptcy under said law acquires no right, title or interest in said membership of said bankrupt, and this respondent

is further advised by its counsel and claims that if said bankrupt law shall be construed by the courts as an asset in bankruptcy and subject to sale for the purpose of paying the debts of such member of this respondent, it violates the tenth amendment of the constitution of the United States in that it deprives the State of Illinois of its exclusive right to regulate its intrastate commerce.

By reason of the facts and claims hereinbefore alleged, this respondent is advised by its counsel, and claims, that said petition of said E. H. Johnson presents a controversy in bankruptcy, as distinguished from a proceeding in bankruptcy, and that this court has no jurisdiction thereof, or of this respondent in connection therewith, without the consent of this respondent, and this respondent does not consent that this court may take jurisdiction of said controversy, but herein objects to this court exercising such jurisdiction, and asks that said petition be dismissed for want of jurisdiction.

[Corporate Seal.] BOARD OF TRADE OF THE CITY OF  
CHICAGO,

By JOHN R. MAUFF,

*Its Secretary.*

ROBBINS, TOWNLEY & WILD,

HENRY S. ROBBINS,

*Solicitors for Respondent.*

STATE OF ILLINOIS,

*County of Cook, ss:*

John R. Mauff, being first duly sworn, says that he is the Secretary of the respondent, the Board of Trade of the City of Chicago; that he has read the foregoing pleading and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

JOHN R. MAUFF.

Subscribed and sworn to before me, this 16th day of June, 1920.

[SEAL.]

OSCAR E. FLINT,

*Notary Public.*

(Endorsed:) Filed June 16, 1920. John H. R. Jamar, Clerk.

And on to-wit: the 21st day of June, 1920, there was entered the following order by the Court in words and figures following to-wit:

22 *Order of June 21, 1920.*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, June 21, 1920.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

On motion, it is ordered by the court that leave be and hereby is given E. H. Johnson, Trustee herein, to amend his petition by making Armour Grain Company, George H. Hellman and J. E. Bennett & Company parties to rule to show cause entered herein on June 10, 1920.

And afterwards on, to wit, the 2nd day of May, 1921, this matter coming on to be heard, the following order was entered by the Court:

*Order of May 2, 1921.*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Monday, May 2, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

This cause coming on to be heard upon the motion of the Board of Trade of the City of Chicago to dismiss the petition of E. H. Johnson, Trustee herein, against said Board of Trade, and the amendment thereto, the Court being fully advised in the premises, it is ordered by the court that said motion be and it hereby is overruled and denied.

20 BD. OF TRADE, CHICAGO, ET AL. VS. E. H. JOHNSON, ETC.

23 And afterwards on, to wit, the 25th day of July, 1921,  
this matter coming on to be heard, the following order was  
entered by the Court:

*Order of July 25, 1921.*

In the District Court of the United States for the Northern District  
of Illinois, Eastern Division.

Monday, July 25, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In re WILSON F. HENDERSON, Bankrupt.

On motion, it is ordered by the Court that leave be and hereby  
is given to E. H. Johnson, Trustee herein, to file an amendment  
and supplement to the petition heretofore filed by him against the  
Board of Trade of the City of Chicago and others.

And on, to wit, the 25th day of July, 1921, came the Trustee by  
his attorney and filed in the Clerk's office of said Court a certain  
Amendment and Supplement in words and figures following, to wit:

*Amendment and Supplement to Petition of Trustee.*

Filed July 25, 1921.

Entered July 25, 1921.

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District  
of Illinois.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Amendment and Supplement to Petition of E. H. Johnson, Trustee.

Now comes E. H. Johnson, Trustee, in bankruptcy for Wilson  
F. Henderson and by leave of Court first had and obtained  
24 amends and supplements the petition heretofore filed by him  
against the Board of Trade of the City of Chicago and others  
by adding thereto and amending said petition so that said petition  
shall read following the first line on the sixth, or last, page of said  
petition as follows:—

Your petitioner further shows that the claims, objections or charges made and filed against the said Wilson F. Henderson within ten days of May 1, 1919, as hereinabove referred to, were the claims of that certain firm known as Bridge & Leonard, the nature of which is unknown to your petitioner and also the claim upon an award alleged to have been made under the rules of the Board of Trade against the said Wilson F. Henderson by reason of a transaction with one Thomas Walters; that the claim, objection or charge so filed by Bridge & Leonard was thereafter withdrawn, and that after the withdrawal thereof, about, to wit December, 1919, the said claim upon said award was dismissed and denied by the Board of Directors thereof, and that thereafter and until the 29th day of January, 1920, after the filing of the application for the adjudication in bankruptcy of the said Wilson F. Henderson there were no claims, objections or charges on file with said Board of Trade of the City of Chicago as against the said Wilson F. Henderson, or the transfer of his membership, except only the claim of the Board of Trade Clearing House, as hereinabove stated; but your petitioner shows that subsequent to the filing of his petition and to the facts therein set forth and subsequent to the denial of the plea by the respondents to said petition to the jurisdiction of this court over such petition, there was again presented to and accepted by the said Board of Trade of the City of Chicago the claim or charge made by or in behalf of the said Bridge & Leonard, by which the suspension of the said Wilson F. Henderson from all of the privileges of said Board of Trade was then demanded, such claim, charge, or proceeding having been filed on or about, to wit, June 17, 1921; that Bridge & Leonard are creditors of said Lipsey & Co. the corporation, and have no other claim of any kind against said Henderson but otherwise your petitioner is not advised as to the nature of such claim, or charge, or the proceedings so pending, or as to whether such proceedings have been in accordance with the rules of said Board of Trade, or as to how far such proceedings have progressed; that your petitioner denies that said Bridge & Leonard have any rights against said Henderson or his said membership, yet your petitioner shows that the said Board of Trade of the City

25 of Chicago has permitted the filing of said proceedings and denies the right of your petitioner by reason thereof, and alleges and claims that by reason of such proceedings by said Bridge & Leonard that the membership of said Wilson F. Henderson in said Board of Trade is impaired within the meaning of the rules and regulations of said Board of Trade; that said Henderson has not used in business, or otherwise, his said membership or done any business upon said Board of Trade since May 1, 1919.

Your petitioner further shows that the said Bridge & Leonard should be made a party hereto and to his petition and be required to show cause why the prayer of this petition as now amended and supplemented should not be granted: and that the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House, all of whom are parties hereto and have appeared in these proceedings,



shall likewise be required to answer this amendment and supplement to the petition herein.

And your petitioner further shows that the said Wilson F. Henderson was, as hereinbefore stated, on January 24, 1920, a member of the Board of Trade of the City of Chicago, and the owner of all right, title and interest in and to a membership therein with full power to sell and transfer the same under the rules of said Board; that upon the appointment of your petitioner all such right, title and interest of said Wilson F. Henderson passed to your petitioner and became a part of the estate of said bankrupt to be administered by and under the jurisdiction of this Court; that the said Board of Trade of the City of Chicago has not now and has not had since the petition in bankruptcy was filed against said Wilson F. Henderson any right, title, interest or claim in, to or against said membership of any kind whatsoever; that so far as your petitioner is informed and believes said Board has never made any claim of ownership in or a lien against said membership in its own behalf and has never pretended to have any other interest in regard thereto except that all memberships shall be subject to the rules and regulations of said Board; and your petitioner further shows that he claims all right, title and interest in said membership under the law

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but subject to the rules and regulations of said Board.

Wherefore your petitioner prays that an order may be made and entered requiring said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House and Bridge & Leonard to answer the petition and the amendment and supplement thereto herein and hereby made and to show cause, if any, there be why the said membership in said Board of Trade of the City of Chicago now standing in the name of the said Wilson F. Henderson should not be transferred to said petitioner, as trustee of said Wilson F. Henderson, or why the rights of your petitioner should not be in some other way appropriately recognized and confirmed for the benefit of the estate of said bankrupt and for the purpose of a sale of said membership and why your petitioner, as such trustee, should not be allowed to dispose of the same free and clear of any objections, claims, proceedings for suspension or otherwise and why the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Company, Board of Trade Clearing House, Bridge & Leonard should not be wholly ignored and why your petitioner should not have such other further relief as may be just and equitable.

E. H. JOHNSON,

*Trustee.*

STATE OF ILLINOIS.

*County of Cook, ss:*

E. H. Johnson being first duly sworn, on oath says, that he is the petitioner above named; that he has read the above and foregoing amendment and supplement to his petition and knows the contents thereof, and that the same is true of his own knowledge excepting as

those matters therein stated to be on information and belief, and to those he believes them to be true.

E. H. JOHNSON,  
*Trustee.*

Subscribed and sworn to before me this 22d day of July, A. D. 1921.

[SEAL.]

EVELYN C. GREENE,  
*Notary Public.*

(Endorsed:) Filed July 25, 1921. John H. R. Jamar, Clerk.

And on to-wit: the 25th day of July, 1921, there was filed in the clerk's office of said court a certain Plea, in words and figures following to-wit:

Filed July 25, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

in the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

*Plea to the Jurisdiction of the Court.*

Armour Grain Company, a corporation, George A. Hellman and George S. Bridge and John R. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents in the above petition, appear herein for the sole purpose of pleading to and denying the jurisdiction of this court to entertain the petition of E. H. Johnson, Trustee of said Henderson, filed herein on the 10th day of June, 1920, against these respondents, and the Chicago Board of Trade, or to enter an order as prayed in said petition, and these respondents, not waiving their objection to the jurisdiction of this court as aforesaid, and for the sole purpose of supporting their said objection, adopt and make a part of this plea the averments contained in the plea to the jurisdiction heretofore filed herein by the Board of Trade of the City of Chicago, and ask that all of said averments be treated as a part of this plea as fully as the same were herein set out in full.

By reason of the facts and claims therein in said petition set out, these respondents are advised by their counsel, and claim, that said petition of said E. H. Johnson presents a controversy in bankruptcy,

as distinguished from a proceeding in bankruptcy, and that  
 28 this court has no jurisdiction thereof, or of these respondents  
 in connection therewith, without the consent of these respondents,  
 and these respondents do not consent that this court may take  
 jurisdiction of said controversy, but herein object to this court exercising  
 such jurisdiction, and ask that said petition be dismissed for  
 want of jurisdiction.

ARMOUR GRAIN COMPANY,  
 By ROBBINS, TOWNLEY & WILD,  
*Its Solicitors.*

GEORGE S. BRIDGE,  
 JOHN R. LEONARD,  
 By ROBBINS, TOWNLEY & WILD,  
*Their Solicitors.*

GEORGE A. HELLMAN,  
 By ROBBINS, TOWNLEY & WILD,  
*His Solicitors.*

JAMES E. BENNETT,  
 FRANK J. SAIBERT,  
 FRANK F. THOMPSON, &  
 FRANK A. MILLER,  
 By ROBBINS, TOWNLEY & WILD,  
*Their Solicitors.*

HENRY S. ROBBINS,  
*Counsel for Respondents.*

(Endorsed:) Filed July 25, 1921. John H. R. Jamar, Clerk.

29 And afterwards on, to wit, the 25th day of July, 1921, this  
 matter coming on to be heard, the following order was entered  
 by the Court:

*Order of July 25, 1921.*

Entered July 25, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District  
 of Illinois, Eastern Division.

Monday, July 25, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Order.

This matter coming on on the plea of Armour Grain Company,  
 a corporation, George A. Hellman, and George S. Bridge and John

R. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee of said Henderson, filed herein on the 10th day of June, 1920, and the court being advised in the premises, it is

Ordered that said plea be and the same is hereby denied.

Enter.

K. M. L.,  
Judge.

30 And on to wit: the 25th day of July, 1921, there was filed in the Clerk's office of said Court a certain Answer, in words and figures following to-wit:

*Answer of Board of Trade of the City of Chicago.*

Filed July 25, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

The Answer of the Board of Trade of the City of Chicago to the Petition of E. H. Johnson, Trustee, Filed on June 10, 1920, and the Amendment and Supplement Thereto.

The Board of Trade of the city of Chicago, without waiving or intending to waive its right to object to the jurisdiction of the above entitled court over this respondent, and its right to insist on the validity of its plea to the jurisdiction of this court heretofore overruled by this court, for answer to so much of the petition as it is advised that it is material for it to make answer unto, avers:

That this respondent is organized under a special charter granted to it by the state of Illinois on the 18th day of February, 1859, and that by its said charter there was granted to this respondent the right to admit and expel such persons as it might see fit, in manner to be prescribed by its rules, regulations and by-laws, and the power to make such rules regulations and by-laws from time to time as it might think proper or necessary for the government of said corporation, not contrary to the laws of the land, and also power to establish such rules, regulations and by-laws for the management of the business of its members and the mode in which it shall be transacted, as this respondent might think proper.

31 That pursuant to the powers thus conferred, the members of this respondent, prior to the 1st day of November, 1899, adopted, in addition to Rules X and XXII set out in said petition, the following rules, all of which are still in full force and effect:

#### Rule I.

"Section 1. The government of the Board of Trade of the City of Chicago, and the control and management of its Real Estate (including all of the authority and power heretofore vested in the Board of Real Estate Managers), are hereby vested in a President, two Vice-Presidents, and fifteen Directors, who, including the President and Vice-President, shall be known as the Board of Directors, all of whom shall have been members of the Association for at least one year next preceding their election. The President, one Vice-President, and five Directors shall be elected annually. The President shall hold his office for the term of one year, or until his successor is elected and qualified; the Vice-Presidents, in like manner, shall hold their offices for the term of two years, and the Directors, in like manner, for the term of three years. Ten members of the Board of Directors shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time, to any fixed date preceding the next regular meeting of said Board."

#### Rule IV.

"Section 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation, or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen (15) days prior to the hearing of such application by the Board of Directors. \* \* \*

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regulations and by-laws of the Association, he shall be suspended from all of the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with.

When any member shall be guilty of improper conduct of a per-

sonal character in any of the rooms of the Association, or shall violate any of the rules, regulations or by-laws of the Association or shall be guilty of any dishonorable conduct, for which a specific penalty has not been provided, he shall be suspended by the Board of Directors from all of the privileges of membership for such period as in their discretion the gravity of the offense committed may warrant. When any member shall be guilty of making or reporting any false or fictitious purchase or sale, or where any member shall be guilty of an act of bad faith, or any attempt at extortion or of any dishonest conduct, he shall be expelled by the Board of Directors. Or when a member shall, either in the Exchange Building or elsewhere, contract to give to himself or another the option to sell or buy any of the articles dealt in on this Exchange in violation of any criminal statute of this State, he shall forfeit the right to have said contract enforced under the rules of this Association. \* \* \*

Sec. 16. All charges made to the Board of Directors against any member of the Association for any default, misconduct or offense, shall be in writing, and in duplicate, and shall state the default, misconduct or offense charged; and the same shall be signed by one or more members of the Association, by a business firm, one or more of whose members shall be a member of the Association, or by the Chairman of a committee of the Association.

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, if the charges apply to the firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be  
33 considered sufficient, and the examination may proceed whether the accused is present or not.

That there is no rule or by-law or regulation of the Board of Trade under which any member of this respondent is entitled to any certificate of membership or other written evidence of the fact that such person is a member of this respondent.

That said Henderson was admitted to membership in this respondent on the 1st day of November, 1899, and that at the time of his said admission and in order to secure the same, said Henderson signed and delivered to this respondent his written agreement to abide by the rules, regulations and by-laws of this respondent, and all amendments that might be made thereto.

That for many months prior to March 1, 1919, said Henderson was the president and a bona fide and substantial stockholder in a corporation known as Lipsey & Company, whose business was the buying and selling of grain for present and future delivery upon the Exchange of this respondent, and another of its executive officers was

also a bona fide and substantial stockholder of said corporation and also a member in good standing of this respondent, and that by reason of the facts aforesaid said corporation was under Section 11 of Rule XXII aforesaid, entitled to have itself accepted as a party to, or principal in, trades and transactions made by it upon said Exchange of this respondent, and that for many months prior to March 1, 1919, and while said corporation was thus entitled to trade in its own name upon the Exchange of this respondent, said Lipsey & Company, through said Henderson as its president and its active executive officer, was engaged in making contracts for present and future delivery upon the Exchange of this respondent and said Henderson had caused the name of said corporation to be given as a principal in and party to all of said trading; that in March, 1919, said Lipsey & Company became insolvent and ceased to transact business, being then indebted on business obligations, made by it in its own name upon said Exchange in conformity with the rules and regulations of this respondent, to the following persons, firms and corporations—said individuals and the partners in said firms being members of said Board of Trade, and said corporations being entitled to the privilege of trading on said Exchange—in the amounts hereinafter set opposite their respective names:

34	Armour Grain Co.....	\$13,699.43
	W. P. Anderson & Co.....	173.44
	Bridge & Leonard.....	606.04
	E. W. Bailey & Co.....	628.91
	J. E. Bennett & Co.....	2,407.27
	Bartlett Frazier & Co.....	73.75
	Chicago Board of Trade.....	42.35
	Carhardt, Code, Hardwood Co.....	390.03
	Clement, Curtis & Co.....	210.20
	S. J. Feeney.....	211.25
	Geo. Forbes.....	107.50
	Geo. A. Hellman.....	42,600.00
	F. W. Hotchkiss.....	447.00
	Logan & Bryan.....	216.49
	Iamson Bros. & Co.....	54.43
	F. S. Lewis & Co.....	270.83
	Lowitz & Co.....	95.12
	Lynch & McKee.....	92.69
	J. F. Morton.....	2.80
	J. P. Malloy.....	273.12
	Sam Mincer.....	9.60
	Norris Grain Co.....	111.44
	E. D. Norton.....	254.39
	J. Rosenbaum Grain Co.....	301.78
	Riordan, Martin & Co.....	527.50
	Simons, Day & Co.....	141.31
	Sawyers Grain Co.....	108.12
	Scoville & Wing.....	223.76
	A. O. Slaughter & Co.....	141.25



Thomson & McKinnon.....	161.34
G. B. Van Ness & Co.....	777.23
Ware & Leland.....	71.68
E. J. Young.....	94.25

And that said Armour Grain Company, George A. Hellman and J. E. Bennett & Co. have already duly filed with this respondent their objections to the transfer of the membership of said Henderson, and that each and every of said claims above enumerated is still owing and unpaid; that this respondent has always construed Section 2 of said Rule X and Section 11 of Rule XXII as constituting a debt of a corporation (entitled to trade in its own name under Section 11 of

Rule XXII) an outstanding unadjusted and unsettled claim  
 35 held by members of said Board of Trade within the meaning of Section 2 of Rule X above set out, and that said membership of said Henderson is not transferable under said rules until all of said claims are paid or until all of said persons, firms and corporations shall consent thereto, and none of said persons, firms or corporations have consented to the transfer of said membership, and said Bridge & Leonard have instituted before the Board of Directors a proceeding, under Section 7 of Rule IV, to have said Henderson suspended from all the privileges of this respondent by reason of the failure of said Lipsey & Company to pay their said claim, which proceeding is still pending before said Board of Directors, and by reason of the facts aforesaid said membership of said Henderson is impaired within the meaning of Section 2 of Rule X; and this respondent is without power to, and is unwilling to, transfer said membership as prayed in said petition.

That there is no rule, regulation or by-law of this respondent under or by which a member of this respondent to whom another of its members is indebted may cause the membership in this respondent of said debtor member to be sold to pay such debt, and that this respondent is advised by its counsel, and therefore claims, that under the charter of this respondent and the laws of the state of Illinois as construed by its courts, a membership in this respondent is neither property nor subject to sale on execution or other legal process issued by a creditor of such member for the purpose of securing the payment of any debt due from a member of this respondent to such creditor, and also that said membership is not an asset in bankruptcy under the Federal Bankruptcy Act, and that when a member of this respondent is adjudged a bankrupt under said law, his trustee in bankruptcy under said law acquires no right, title or interest in said membership of said bankrupt, and this respondent is further advised by its counsel and claims that if said bankruptcy law should be so construed as to make a membership in this respondent an asset in bankruptcy and subject to sale for the purpose of paying the debts of such member of this respondent, said law would violate the tenth amendment of the Constitution of the United States in that it deprives the State of Illinois of its exclusive right to regulate its intrastate commerce.

30      BD. OF TRADE, CHICAGO, ET AL. VS. E. H. JOHNSON, ETC.

36      Wherefore this respondent asks that said petition be dismissed as to this respondent at petitioner's cost.

[Corporate Seal.]      BOARD OF TRADE OF THE CITY  
OF CHICAGO.

By JOHN R. MAUFF, *Its Secretary.*

ROBBINS, TOWNLEY & WILD,  
*Solicitors for Respondent.*

STATE OF ILLINOIS,  
*County of Cook, ss:*

John R. Mauff, being first duly sworn, says that he is the Secretary of the respondent, the Board of Trade of the City of Chicago; that he has read the foregoing pleading and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

JOHN R. MAUFF.

Subscribed and sworn to before me this 21st day of June, A. D. 1921.

[SEAL.]

JOHN A. AITKINS,  
*Notary Public.*

(Endorsed:) Filed July 25, 1921 John H. R. Jamar, Clerk.

37      And on to-wit: the 25th day of July, 1921, there was filed in the Clerk's office of said Court a certain Answer in words and figures following to-wit:

Filed July 25, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

*The Answer of Armour Grain Company, a Corporation, George A. Hellman, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Co., to the Petition of E. H. Johnson, Trustee, Filed on June 10, 1920, and the Amendment and Supplement Thereto.*

Armour Grain Company, a corporation, George A. Hellman and George S. Bridge and John R. Leonard, doing business as

Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., without waiving or intending to waive their right to object to the jurisdiction of the above entitled court over those respondents, and their right to insist on the validity of their plea to the jurisdiction of this court heretofore overruled by this court, or answer to so much of the petition as they are advised that it is material for them to make answer unto, aver:

These respondents adopt and make a part of this answer all of the averments contained in the answer of the Chicago Board of Trade to said petition of E. H. Johnson, Trustee, and ask that all of said averments be treated as a part of this answer as fully as if all of said averments had been repeated in this answer of these respondents.

Wherefore these respondents ask that said petition be dismissed as to these respondents at petitioner's costs.

ARMOUR GRAIN COMPANY,  
GEORGE A. HELLMAN,  
JAMES E. BENNETT,  
FRANK J. SAIBERT,  
FRANK F. THOMPSON, AND  
FRANK A. MILLER, AND  
GEORGE S. BRIDGE,  
JOHN R. LEONARD,

By ROBBINS, TOWNSLEY & WILD,  
*Their Solicitors.*

HENRY S. ROBBINS,  
*Council for Respondents.*

(Endorsed:) Filed July 25, 1921 John H. R. Jamar, Clerk.

And afterwards on, to-wit, the 29th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

*Order or Decree of July 29, 1921.*

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District of Illinois.

Friday, July 29, 1921.

Present: Hon. K. M. Landis, District Judge.

Gen. No. 28256.

In the Matter of Bankruptcy of WILSON F. HENDERSON.

This cause now coming on to be heard upon the verified petition of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson,

Bankrupt, filed June 10, 1920, and the amendment and supplement thereto heretofore filed by leave of Court, said petition asking to have the membership of said bankrupt in the Board of Trade of the City of Chicago declared an asset of said bankrupt's estate free and clear of any and all claims, and upon a rule to show cause heretofore entered upon said petition against the Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and Bridge & Leonard, and upon the answers filed by all of said parties to said petition as amended and supplemented and to said rule to show cause against them, and this cause having been submitted to the Court by all parties thereto upon the petition of the Trustee, as amended and supplemented, and the answers thereto of all said parties, and without evidence being heard, and the Court having examined and deconsidered the petition and answers and all facts therein set forth, and the cause having been fully argued, and the Court being fully advised in the premises,

It is now found, considered and determined by the court that this court has jurisdiction of the subject matter and of the parties hereto; that there is no dispute as to the material facts in this cause but all of the facts are as set forth in the petition, the amendment and supplement thereto and the answers to the petition as amended and supplemented; that, from the facts so appearing to the court, the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House and Bridge & Leonard, and each and all of them have failed by their answers to show cause in compliance with the previous order of this court; that the membership of the bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act, which has passed and now belongs to said E. H. Johnson, as Trustee in bankruptcy of the estate of Wilson F. Henderson, bankrupt; that prior to the filing of the petition in bankruptcy against Wilson F. Henderson and on January 24, 1920, the said Wilson F. Henderson owned and held said membership in his own name with full right and power which he might have exercised for his own benefit to transfer his said membership to any person eligible to membership in said Board of Trade, said bankrupt having complied with all of the rules of said Board and having duly posted on May 1, 1918, his application for the transfer of such membership more than ten days prior to January 24, 1920; that on January 24, 1920, there were no claims or objections filed or pending with, or that had been allowed by the Board of Trade of the City of Chicago based upon outstanding, unadjusted or unsettled claims or contracts against said Wilson F. Henderson filed within ten days of the posting of his application for the transfer of membership, and that the membership of said bankrupt was not in any way impaired or forfeited, nor were any proceedings then pending for the discipline of said bankrupt; that upon the appointment of E. H. Johnson as Trustee of said bankrupt and following the adjudication of bankruptcy, said Trustee became the owner and holder of said membership for the purpose of the sale,

transfer and disposition thereof for the benefit of the bankrupt estate with all of the rights and powers which the bankrupt might have exercised for the transfer thereof; that the claims against the corporation known as Lipsey & Company as set forth in the answers herein do not constitute outstanding, unadjusted or unsettled claims or contracts against the bankrupt herein proper to be filed as objections to the transfer of said bankrupt's membership at any time and that no such claims or objections had been filed prior to the filing of the petition in bankruptcy against Wilson F. Henderson on January 24, 1920; that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., were claims against Lipsey & Company and were not proper to be filed or recognized by the Board of Trade of the City of Chicago and were filed subsequent to January 24, 1920, and none of said claims, or any other claims against Lipsey & Company as set forth in the answers herein constitute valid objections, claims or liens upon or against the said membership or the transfer thereof; that the claim or objection of the Board of Trade Clearing House was not filed within ten days after the posting of the application for transfer of such membership and does not constitute a valid claim or lien thereon or against the transfer thereof; that the only right or remedy which creditors of the corporation known as Lipsey & Company might have, or could have against said Wilson F. Henderson as an officer of said corporation under the rules of the Board of Trade of the City of Chicago was to have said Henderson disciplined in accordance with said rules, but no proceedings for the purpose or object of disciplining said Henderson were pending on January 24, 1920; that after the adjudication of Henderson as a bankrupt and the appointment of a trustee said Henderson ceased to be a member of the Board of Trade of the City of Chicago, his membership having thereupon passed to the Trustee by operation of law; that the proceedings for the suspension of said Henderson filed on June 17, 1921, by Bridge & Leonard were filed 41 long after these proceedings in bankruptcy were pending, after the adjudication in bankruptcy thereof, after the trustee had become possessed of and the owner for the purpose of sale of said membership and after said Henderson had ceased to be a member of said Board, and said proceedings were entirely unavailing and invalid and do not constitute any lien or claim, objection or impairment of said membership as against the Trustee herein.

It is therefore ordered, adjudged and decreed that the membership of said bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act and which has passed and now belongs to said E. H. Johnson, as Trustee in bankruptcy of the assets of said Wilson F. Henderson, and that said membership has passed and now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of said Board of Trade of the City of Chicago, and that said Trustee shall hold and now does hold the same for sale and transfer or the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Wilson F. Henderson.

It is further ordered, adjudged and decreed that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House, and Bridge & Leonard are hereby overruled and disallowed and declared invalid as against the membership of said Wilson F. Henderson in the Board of Trade of the City of Chicago, and the rights of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson; and the said Board of Trade of the City of Chicago is hereby ordered to disallow and to refuse to recognize for any purpose as against E. H. Johnson, Trustee, the said claims and shall not permit the filing of any other claims, or proceedings as objections, liens or otherwise as against E. H. Johnson, Trustee, upon or against the said membership now standing in the name of Wilson H. Henderson; said Board of Trade of the City of Chicago is hereby ordered to disregard or dismiss proceedings of Bridge & Leonard for the suspension of said Wilson F. Henderson and shall not conduct any hearing or permit any further proceedings for the discipline of said Henderson, or take or permit any action of any kind whatever hereafter as against the rights of E. H. Johnson, Trustee, as herein determined, at the petition of Bridge & Leonard or any other person or corporation, which might or could or

42 shall have as its object the impairment or forfeiture of said membership; and said Board of Trade is also hereby ordered to permit the transfer of said membership upon the application of the trustee, but of no other person, to any person eligible to membership in accordance with its rules relating to the transfer of memberships.

It is further ordered, adjudged and decreed that in order to enable said E. H. Johnson as said Trustee to sell and dispose of said membership for the benefit of said estate, the said Board of Trade of the City of Chicago shall recognize, accept and enter upon its records said E. H. Johnson, Trustee, as owner of the said membership of said Wilson F. Henderson in and upon said Board of Trade of the City of Chicago, but for the purpose of sale only.

Enter:

K. M. LANDIS.

*Judge.*

And on to-wit: the 29th day of July, 1921, there was filed in the clerk's office of said court a certain Stipulation, in words and figures following to-wit:

*Stipulation.*

Filed July 29, 1921.

Gen. No. 28,256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; the Petition of E. H. JOHNSON, Trustee, Against Board of Trade of the City of Chicago et al.

*Stipulation.*

It is hereby stipulated by the parties to this proceeding that the Board of Trade Clearing House mentioned in the proceedings herein

is not an independent person, but a mere agency or department of the Board of Trade of the City of Chicago, and that the claim of the Board of Trade Clearing House referred to in the proceedings herein is the claim of the Board of Trade of the City of Chicago.

It is therefore stipulated that the proceeding may be dismissed as to the Board of Trade Clearing House without prejudice to the rights of either of said parties.

KRAFT, KRAFT & ERSKINE,  
*Solicitors for Trustee.*  
ROBBINS, TOWNLEY & WILD,  
*Solicitors for Board of Trade et al.*

(Endorsed:) Filed July 29, 1921. John H. R. Jamar, Clerk.

43 And afterwards on, to wit, the 29th day of July, 1921, this matter coming on to be heard, the following order was entered by the Court:

*Order of July 29, 1921.*

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern Division of Illinois, Eastern Division.

Friday, July 29, 1921.

Present: Honorable Kenesaw M. Landis, District Judge.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Order.

This cause now coming on upon the petition of E. H. Johnson, Trustee, against the Board of Trade of the City of Chicago and upon stipulation of the parties thereto this day filed, it is

Ordered that said proceedings as to the Board of Trade Clearing House be dismissed.

— — —  
*Judge.*

And on, to wit, the 12th day of August, 1921 came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Petition for Appeal in words and figures following, to wit:



44

*Petition for Appeal.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District  
of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

*Petition for Allowance of Appeal.*

Board of Trade of the City of Chicago, Armour Grain Company, a corporation; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee, filed in this court on the 10th of June, 1920, conceiving themselves to be aggrieved by the order and decree entered in this court on the 27th day of July, 1921, do hereby appeal from said order and decree to the United States Circuit Court of Appeals of the Seventh Circuit for the reasons specified in the assignment of errors filed herewith, and they pray that this appeal may be allowed, and that the transcript of the record, stipulations and other records herein be transmitted forthwith to the United States Circuit — of Appeals for the Seventh Circuit.

BOARD OF TRADE OF THE CITY OF  
CHICAGO,  
ARMOUR GRAIN COMPANY,  
GEORGE A. HELLMAN,  
GEORGE S. BRIDGE,  
JOHN R. LEONARD,  
JAMES E. BENNETT,  
FRANK J. SAIBERT,  
FRANK F. THOMPSON,  
FRANK A. MILLER,  
ROBBINS, TOWNLEY & WILD,  
*Their Solicitors.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

45 And on, to wit, the 12th day of August, 1921, came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Assignments of Errors in words and figures following, to wit:

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
Northern District of Illinois,  
State of Illinois, ss:

In the District Court of the United States for the Northern District  
of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

*Assignments of Errors.*

Now come the respondents, Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., and file the following assignment of errors, upon which they rely for grounds for reversal on the appeal in the above entitled cause:

That the District Court erred—

1. In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction:

2. In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belong to the said E. H. Johnson as trustee in bankruptcy:

3. In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board:

4. In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, unadjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;

46 5. In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

6. In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

7. In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

8. In holding that the claims of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

9. In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

10. In adjudging that the proceedings for the suspension of said Henderson filed on June 17, 1921, were unavailing and invalid and did not constitute an impairment of said membership as against said trustee;

11. In adjudging that said membership of said Henderson now belongs to said trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said trustee should hold same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson;

12. In adjudging that the claims of these respondents were invalid as against the membership of said Henderson and the rights of said Johnson as trustee;

13. In entering the decree ordering that respondent, Board of Trade of the City of Chicago, disallow and refuse to recognize for any purpose as against said trustee the said claims mentioned in said answer of the respondent, Board of Trade, and in ordering that said Board of Trade shall not allow any other claims or proceedings as objections, liens or otherwise against said trustee upon or against the membership of said Henderson;

14. In directing said Board of Trade to disregard and dismiss the proceedings of the respondent, Bridge & Leonard for the suspension of said Henderson and take no action in said proceeding  
-47 which would impair or forfeit that membership;

15. In ordering the Board of Trade to permit the transfer of said membership upon the application of the trustee but of no other person;

16. In ordering said trustee to sell and dispose of said membership for the benefit of said estate;

17. In directing the Board of Trade to recognize, accept and enter upon its records said E. H. Johnson, Trustee, as the owner said membership of said Henderson;

18. In not dismissing the petition of the trustee.

ROBBINS, TOWNLEY & WILD,  
*Solicitors for said Respondents.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And afterwards, to wit, on the 12th day of August, 1921, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

*Order of Aug. 12, 1921.*

UNITED STATES OF AMERICA,  
Northern District of Illinois,  
State of Illinois, ss:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; Petition of E. H. JOHNSON, Trustee, Filed June 10, 1920.

*Order.*

The respondents in the above petition having filed their certain petition of appeal on assignments of error, now, on motion of counsel for respondents, it is

Ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the final order entered in the above entitled proceedings on the 27th day of July, 1921, be and the same is hereby allowed, and that a certified transcript of the record of the proceedings be forthwith transmitted to the said Circuit Court of Appeals; and it is

Further Ordered that the defendant file within ten (10) days from the entry of this order an appeal bond signed by the respondent, the Board of Trade of the City of Chicago, with a surety approved by this court in the usual form in the sum of One Thousand Dollars that upon the giving of said appeal bond the same shall operate as a supersedeas.

Enter.

K. M. LANDIS,  
*Judge.*

And on to-wit: the 17th day of August, 1921, come the Board of Trade of the City of Chicago, a corporation, as principal and John Hill, Jr., as surety, and filed in the Clerk's office of said Court, in said entitled cause, a certain Bond in words and figures following, to-wit:

*Appeal Bond.*

Filed Aug. 17, 1921.

Know All Men By These Presents: That we, the Board of Trade of the City of Chicago, a corporation, as principal, and John Hill,

Jr., as surety, are held and firmly bound unto E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, Bankrupt, in the full and just sum of One Thousand (\$1,000) Dollars, to be paid to said E. H. Johnson as Trustee, for which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents:

Sealed with our seals and dated this 16th day of August, A. D. 1921.

Whereas, lately and on the 27th day of July, 1921, the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding pending in said court in the matter of the bankruptcy of Wilson F. Henderson, and upon the petition filed by said Johnson as Trustee against said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John B. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett &

Co., did enter a final order granting the prayer of said petition, and said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John B. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., have obtained an order of appeal from said court to reverse said order in said proceeding, and a citation directed to the said Johnson as Trustee citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit thirty (30) days from and after the date of said citation. Now the condition of the above obligation is such that if the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, George S. Bridge and John B. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., shall duly prosecute their bill with effect, and answer all damages and costs if they shall fail to make good their plea; then the above obligation to be void, else to remain in full force and effect.

BOARD OF TRADE OF THE CITY OF  
CHICAGO,  
By JOSEPH P. GRIFFIN,

*President.*

Attest:

WALTER S. BLOUNEY,

*Assistant Secretary.*

JOHN HILL, Jr.

[SEAL.]

O. K.  
K. M. L.

O. K.  
KRAFT, KRAFT & ERSKINE,  
*Attys. for Trustee.*

(Endorsed:) Filed Aug. 17, 1921. John H. R. Jamar, Clerk.

50

*Præcipe for Transcript of Record.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
Northern District of Illinois,  
State of Illinois, ss:

In the District Court of the United States for the Northern District  
of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

To John H. R. Jamar, Clerk of the United States District Court for  
the Northern District of Illinois, Eastern Division:

You will please prepare and certify a transcript of the following  
proceedings in the above entitled cause:

- (1) Petition to have Henderson adjudged a bankrupt;
- (2) Order of February 24, 1920, adjudging Henderson a bankrupt;
- (3) Order or other papers showing E. H. Johnson appointed as trustee;
- (4) Petition of trustee filed June 10, 1920;
- (5) Order to show cause entered therein;
- (6) Plea of Board of Trade to the jurisdiction filed to the said petition of Trustee Johnson on the 16th of June, 1920;
- (7) Order of June 21, 1920, permitting the trustee to amend his petition;
- (9) Order of May 2, 1921, overruling the said plea to the jurisdiction;
- (10) Order of July 25, 1921, allowing petitioner to file amendment and supplemental petition;
- (11) Said amendment and supplement;
- (12) Plea to the jurisdiction of the court filed by the Armour Grain Company, et al., on the 25th of July, 1921.
- (13) Order entered July 25, 1921, denying said plea of Armour Grain Company, et al.,
- (14) Answer of the Board of Trade filed July 25, 1921;

(15) Answer of Armour Grain Company, et al., filed July 25, 1921;

(16) Order entered July 29, 1921, granting the prayer of the petition of E. H. Johnson, Trustee,

(17) Stipulation of parties filed July 29, 1921;

51 (18) Order dismissing the proceeding as to Board of Trade Clearing House;

(19) Petition for allowance of appeal;

(20) Assignment of errors;

(21) Order allowing appeal;

(22) Appeal Bond;

Præcipe.

ROBBINS, TOWNLEY & WILD,  
*Solicitors for Certain Respondents.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

*Certificate of Clerk.*

NORTHERN DISTRICT OF ILLINOIS,  
*Eastern Division, ss:*

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled In the Matter of the Bankruptcy of Wilson F. Henderson, No. 28256, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of August A. D. 1921.

[SEAL.]

JOHN H. R. JAMAR,  
*Clerk.*



32

Filed Sept. 26, 1921.

In the United States Circuit Court of Appeals for the Seventh  
Judicial Circuit.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

VS.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition for Review under Section 24b of the Bankruptcy A-.

*The Answer of E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson to the Petition of the Board of Trade of the City of Chicago, et al.*

This respondent saving and reserving unto himself all right of objection and exception to the many errors, imperfections and informalities in the said petition contained for answer thereunto says:

That he admits that he was duly appointed and is now acting as Trustee in bankruptcy of the Estate of Wilson F. Henderson, who was adjudged a bankrupt on February 24, 1920.

This respondent further answering admits that the Board of Trade of the City of Chicago is a corporation existing under a special charter of the State of Illinois now conducting a commercial exchange in the City of Chicago; he admits that Armour Grain Company is a corporation engaged in the purchase and sale of grain operating upon said Board of Trade; and that all other of the petitioners are members of said Board of Trade; but this respondent denies that said Armour Grain Company is, under the rules of said Board of Trade, entitled to all of the rights and privileges accorded to individual members of said Board; and respondents says that the only rights and privileges of said corporation are those enumerated and prescribed by the rules of said Board of Trade, as said rules are included and shown in the petition of this respondent and the answers of the petitioners herein in the proceedings of the District Court here under review.

This respondent further answering admits that the bankruptcy petition against said Wilson F. Henderson was filed on January 24, 1920, and thereafter on February 24, 1920, said Wilson F. Henderson was adjudged a bankrupt, and that on March 20, 1920,

33 this respondent was duly appointed the Trustee in bankruptcy, all as averred in said petition; he further admits that on June 10, 1920, this respondent filed his petition in the said District Court substantially as averred by the petition herein and as will more fully appear from copy of the said petition in the transcript of record filed herein.

This respondent further answering admits that the bankruptcy petition against said Wilson F. Henderson was filed on January 24, 1920, and thereafter on February 24, 1920, said Wilson F. Hender-

son was adjudged a bankrupt, and that on March 30, 1920, this respondent was duly appointed the Trustee in bankruptcy, all as averred in said petition; he further admits that on June 10, 1920, this respondent filed his petition in the said District Court substantially as averred by the petition herein and as will more fully appear from copy of the said petition in the transcript of record filed herein.

This respondent further answering admits that on June 10, 1920, an order was entered by the District Court for a rule to show cause pursuant to the prayer of said petition, and that on June 16, 1920, said Board of Trade in answer to said rule filed its plea to the jurisdiction of said District Court substantially for the reasons indicated and as averred in the petition herein, and that said plea was in fact overruled by the District Court by its order duly entered of record on May 2, 1921; this respondent further admits that on July 25, 1921, all other of the petitioners herein filed their plea to the jurisdiction of the District Court as averred and which plea was on said date overruled by the District Court; this respondent further admits that on July 25th, 1921, he filed an amendment and supplement to his petition in the District Court by leave of said Court, substantially as averred, and that there was filed instantly by all of the petitioners herein their answer to the petition of this respondent as so amended and supplemented.

This respondent further answering admits that said proceedings thereupon and thereafter came on for hearing upon said petition of this respondent as so amended and supplemented and upon the answers of all of the petitioners herein, and that said cause was heard by said District Court as upon the bill and answer, all material facts set forth therein thereby being admitted by the respective parties; and this respondent admits that on July 27, 1921, the said District Court entered its order granting the prayer of respondents petition, all as averred by the petition herein, and as will more  
54 fully appear from the transcript of record of the District Court filed herein.

Further answering this respondent denies, however, that the said judgment order, or decree, of the said District Court made and entered on July 27, 1921, being the order now sought to be reviewed and revised, was erroneous in any of the several respects as averred by the petition herein.

Further answering this respondent shows that the several pleas filed by the petitioners herein to the jurisdiction of said District Court were respectively overruled by the orders of the said District Court duly entered May 2, 1921 and July 25, 1921, and that said orders are not now before this Court under the petition herein to be reviewed and revised, and as a matter of law cannot now be considered by this Court; and further answering this respondent says that the District Court did not in and by its order of July 27, 1921, overrule the said pleas to the jurisdiction of said Court, and that said order is not therefore erroneous in such respect and for not dismissing the petition of your respondent under said pleas; and this respondent further answering says that after the entry of said orders of the Dis

trict Court on May 2, 1921 and July 25, 1921, respectively, the said petitioners herein and all of them did thereafter file their answers to the petition of your respondent in said District Court and did then and there, and by reason thereof waive any right that they might or could have had under their said pleas to the jurisdiction and by the filing of said answers did thereby appear generally in said cause and in said court for all purposes, thereby conferring upon said Court jurisdiction to proceed therewith; wherefore, your respondent says that as a matter of law no question of jurisdiction under said pleas of the petitioners herein is now before this Court for its consideration;

Further answering this respondent now specifically denies that the said order of the District Court made and entered on July 27th, 1921, was erroneous in that the said Court found and held—

(1) That the court had jurisdiction in said cause and in not dismissing said petition for want of jurisdiction because your respondent shows that as a matter of law that the said District Court did have jurisdiction of the said petition with full power to enter the order therein entered by it.

(2) That the membership of the Bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago, was property within the meaning of the Bankrupt Act, and that said membership now belongs to the respondent herein.

55 (3) That Wilson F. Henderson had full power and right on January 24, 1920 to transfer his said membership to any person eligible for membership in said Board of Trade.

(4) That on January 24, 1920 there were no claims or objections filed or pending based upon, outstanding, unadjusted or unsettled claims or contracts and that said membership was not in any way impaired or forfeited.

(5) In holding that upon the appointment of your respondent as Trustee of said Bankrupt he became the holder and owner of said membership for the purpose of transfer and disposition thereof.

(6) That the claims against Lipsey & Company, a corporation, as set out in the answer of said Board of Trade did not constitute outstanding unadjusted and unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time.

(7) That no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920, but respondent says that this is a question of fact and not of law.

(8) That the claim of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership.

(9) That after the adjudication of bankruptcy and the appointment of said Trustee, said Henderson ceased to be a member of said

Board of Trade and that his membership by operation of law passed into the said Trustee.

(10) That the proceedings for the suspension of said Henderson filed on June 17, 1920, were unavailing and invalid and did not constitute an impairment of said membership as against said Trustee.

(11) That said membership of said Henderson now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said Trustee should hold the same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson.

(12) That the claims of the petitioners herein are invalid as against the membership of said Henderson and the rights of your respondent as such Trustee.

(13) In ordering that the petitioners herein, the Board of Trade of the City of Chicago disallow and refuse to recognize for any purpose as against said Trustee, the respondent herein, the said claims mentioned in the answer of said Board of Trade and in  
56 ordering that said Board of Trade should not allow any other claims or proceedings as objections, liens, or otherwise as against said trustee upon or against said Trustee, or upon and against the membership of said Henderson.

(14) In directing the Board of Trade to disregard and dismiss the proceedings of the petitioner herein, Bridge and Leonard, for the suspension of said Henderson and to take no action in said proceedings which would impair or forfeit that membership.

(15) In ordering the Board of Trade to permit the transfer of said membership upon the application of the Trustee but of no other person.

(16) In ordering said Trustee to sell and dispose of said membership for the benefit of said estate.

(17) Directing the Board of Trade to recognize, accept and enter upon its records said E. H. Johnson, Trustee, the respondent herein, as the owner of the membership of said Wilson E. Henderson, the bankrupt.

(18) In not dismissing the petition of the Trustee.

This respondent further answering says that the said order of the District Court of July 27, 1921, cannot now be questioned in this proceeding upon any question of fact (as the facts of this case are set up in the petition of your respondent in the District Court the answers thereto, and the said order of the District Court finding such facts) under any of the alleged errors averred and specifically enumerated by the petition herein, many of which assignments of error do in fact relate to the findings of fact by the district court; but your respondent shows that the only questions of law involved in

the proceedings herein as to which said order of the district court may properly be considered and reviewed by this court may be summarized as follows:

(1) Whether the district court had jurisdiction to consider and pass upon the petition of your respondent in said court as against the petitioners herein, Board of Trade of the City of Chicago, et al, if in fact such question can now be said to be before the Court for consideration under the state of the record, which your respondent in no wise admits, but specifically denies for the reasons hereinabove set forth; but respondent avers that as a matter of law the district court did in any event have jurisdiction of the subject matter and parties of these proceedings.

57 (2) Whether the membership of the bankrupt in the Board of Trade of the City of Chicago was property within the meaning and intent of the Bankrupt Act, which passed to and became a part of the estate of said bankrupt in the hands of your respondent as trustee; respondent submits that under the Act of Congress, and the decisions of this Court and the United States Supreme Court such membership is property subject only — the rules of the Board of Trade of the City of Chicago.

(3) Whether under a proper interpretation of the rules of the Board of Trade of the City of Chicago, as shown by the petition and answers before the Court, and under the facts and circumstances therein averred and admitted, this respondent as trustee took the said membership of the bankrupt free and clear of any and all claims with full right to sell and dispose of the same for the benefit of the bankrupt estate aforesaid; this respondent insists that as a matter of law he now holds said membership as property of said estate, that under the rules of the Board of Trade the same is free and clear of all claims, conditions, liens and impairment of any character and that he has full right and power under the law and the rules of said Board to sell and dispose of said membership to any one eligible for membership.

This respondent now having answered the said petition to review and revise denies that the petitioners are entitled to the relief, or any part thereof, prayed for therein and he therefore prays that he may be hence dismissed with this reasonable costs and charges in his behalf most wrongfully sustained.

E. H. JOHNSON,

*Trustee.*

F. WILLIAM KRAFT AND  
ROBERT N. ERSKINE,

*Attorneys for Trustee.*

58 STATE OF ILLINOIS,  
*County of Cook, ss:*

I, E. H. Johnson, respondent mentioned and described in the foregoing answer do hereby make solemn oath that the statement of facts contained in the foregoing answer is true according to the best of my knowledge, information and belief.

E. H. JOHNSON.

Subscribed and sworn to before me this 26th day of September A. D. 1921.

[SEAL.]

JAMES McKEAG,  
*Notary Public.*

(Endorsed:) #3028 United States Circuit Court of Appeals Board of Trade of the City of Chicago et al. Petitioner, vs. E. H. Johnson, Trustee Respondent. Answer of Trustee filed Sep. 26, 1921. Edward M. Holloway, Clerk. Kraft, Kraft & Erskine Attorneys & Counselors at Law 517-520 Harris Trust Building 111 W Monroe Street Chicago, Ill.

58½

*Placita.*

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Kenesaw M. Landis, District Judge of the United States for the Northern District of Illinois, on 29th day of July, in the year of our Lord one thousand nine hundred and 21, being one of the days of the regular July Term of said Court begun Monday, the 4th day of July, and of our Independence the 146th year.

Present:

Honorable Kenesaw M. Landis.  
John J. Bradley, U. S. Marshal.  
John H. R. Jamar, Clerk.

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And afterwards, to wit, on the 29th day of July, 1921, being one of the days of the regular July term of said Court in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

*Order or Decree of July 29, 1921.*

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District  
of Illinois.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

This cause now coming on to be heard upon the verified petition of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson, Bankrupt, filed June 10, 1920, and the amendment and supplement thereto heretofore filed by leave of Court, said petition asking to have the membership of said bankrupt in the Board of Trade of the City of Chicago declared an asset of said bankrupt's estate free and clear of any and all claims, and upon a rule to show cause heretofore entered upon said petition against the Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., and Bridge & Leonard, and upon the answers filed by all of said parties to said petition as amended and supplemented and to said rule to show cause against them, and this cause having been submitted to the Court by all parties thereto upon the petition of the Trustee, as amended and supplemented, and the answers thereto of all said parties, and without evidence being heard, and the Court having examined and considered the petition and answers and all facts therein set forth, and the cause having been fully argued, and the Court being fully advised in the premises,

It Is Now Found, Considered And Determined By The Court that this Court has jurisdiction of the subject matter and of the parties hereto; that there is no dispute as to the material facts in this case but all of the facts are as set forth in the petition, the amendment and supplement thereto and the answers to the petition as amended and supplemented; that, from the facts so appearing to the court, the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, J. E. Bennett & Co., Board of Trade Clearing House and Bridge & Leonard, and each and all of them have failed by their answers to show cause in compliance with the previous order of this Court; that the membership of the bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the bankruptcy Act, which has passed and now belongs to said E. H. Johnson, as Trustee, in bankruptcy of the estate of Wilson F. Henderson, Bankrupt; that prior to the filing of the petition in bankruptcy against Wilson F. Henderson and on January 24, 1920, the said Wilson F. Henderson owned and held said membership in his own name with full right and power which he might have exercised for his own benefit to transfer his said membership to any person eligible to membership in said Board of Trade, said bank-



rupt having complied with all of the rules of said Board and having duly posted on May 1, 1918, his application for the transfer of such membership more than ten days prior to January 24, 1920; that on January 24, 1920 there were no claims or objections filed or pending with, or that had been allowed by the Board of Trade of the City of Chicago based upon outstanding, unadjusted or unsettled claims or contracts against said Wilson F. Henderson filed within ten days of the posting of his application for the transfer of membership, and that the membership of said bankrupt was not in any way impaired or forfeited, nor were any proceedings then pending for the discipline of said bankrupt; that upon the appointment of E. H. Johnson, as Trustee of said bankrupt and following the adjudication of bankruptcy said Trustee became the owner and holder of said membership for the purpose of the sale, transfer and disposition thereof for the benefit of the bankrupt estate with all of the rights and powers which the bankrupt might have exercised for the transfer thereof; that the claims against the corporation known as Lipsey & Company as set forth in the answers herein do not constitute outstanding, unadjusted or unsettled claims or contracts against the bankrupt herein proper to be filed as objections to the transfer of said bankrupt's membership at any time

61 and that no such claims or objections had been filed prior to the filing of the petition in bankruptcy against Wilson F. Henderson on January 24, 1920; that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co., were claims against Lipsey & Company and were not proper to be filed or recognized by the Board of Trade of the City of Chicago and were filed subsequent to January 24, 1920, and none of said claims, or any other claims against Lipsey & Company as set forth in the answers herein constitute valid objections, claims or liens upon or against the said membership or the transfer thereof; that the claim or objection of the Board of Trade Clearing House was not filed within ten days after the posting of the application for transfer of such membership and does not constitute a valid claim or lien thereon or against the transfer thereof; that the only right or remedy which creditors of the corporation known as Lipsey & Company might have, or could have against said Wilson F. Henderson as an officer of said corporation under the rules of the Board of Trade of the City of Chicago was to have said Henderson disciplined in accordance with said rules, but no proceedings for the purpose or object of disciplining said Henderson were pending on January 24, 1920; that after the adjudication of Henderson as a bankrupt and the appointment of a trustee said Henderson ceased to be a member of the Board of Trade of the City of Chicago, his membership having thereupon passed to the Trustee by operation of law; that the proceedings for the suspension of said Henderson filed on June 17, 1921 by Bridge & Leonard were filed long after these proceedings in bankruptcy were pending, after the adjudication in bankruptcy thereof after the trustee had become possessed of and the owner for the purpose of sale of said membership and after said Henderson had ceased to be a member of said Board, and said proceedings were entirely unavailing and invalid and do not constitute any lien

or claim, objection or impairment of said membership as against the Trustee herein.

It Is Therefore Ordered, Adjudged And Decreed that the membership of said bankrupt, Wilson F. Henderson, in the Board of Trade of the City of Chicago is property within the meaning of the Bankruptcy Act and which has passed and now belongs to said E.

J. Johnson, as Trustee in bankruptcy of the assets of said  
62 Wilson F. Henderson, and that said membership has passed and now belongs to said Trustee free and clear of any claims, objections, liens or otherwise under the rules of said Board of Trade of the City of Chicago, and that said Trustee shall hold and now does hold the same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Wilson F. Henderson.

It is further ordered, adjudged and decreed that the claims of Armour Grain Company, George A. Hellman, J. E. Bennett & Co. Board of Trade Clearing House, and Bridge & Leonard are hereby overruled and disallowed and declared invalid as against the membership of said Wilson F. Henderson in the Board of Trade of the City of Chicago, and the rights of E. H. Johnson, Trustee in bankruptcy of Wilson F. Henderson; and the said Board of Trade of the City of Chicago is hereby ordered to disallow and to refuse to recognize for any purpose as against E. H. Johnson, Trustee, the said claims and shall not permit the filing of any other claims, or proceedings as objections, liens or otherwise as against E. H. Johnson, Trustee, upon or against the said membership now standing in the name of Wilson F. Henderson; said Board of Trade of the City of Chicago is hereby ordered to disregard or dismiss proceedings of Bridge & Leonard for the suspension of said Wilson F. Henderson and shall not conduct any hearing or permit any further proceedings for the discipline of said Henderson, or take or permit any action of any kind whatever hereafter as against the rights of E. H. Johnson, Trustee, as herein determined, at the petition of Bridge & Leonard or any other person or corporation, which might or could or shall have as its object the impairment or forfeiture of said membership; and said Board of Trade is also hereby ordered to permit the transfer of said membership upon the application of the trustee, but of no other person, to any person eligible to membership in accordance with its rules relating to the transfer of memberships.

It is further ordered, adjudged and decreed that in order to enable said E. H. Johnson as said Trustee to sell and dispose of said membership for the benefit of said estate, the said Board of Trade of the City of Chicago shall recognize, accept and enter upon its records  
63 said E. H. Johnson, Trustee, as owner of the said membership of said Wilson F. Henderson in and upon said Board of Trade of the City of Chicago, but for the purpose of sale

only.

Enter:

KENESAW M. LANDIS,

*Judge.*

O. K. as to form.

H. S. ROBBIN.

And on, to wit, the 12th day of August, 1921, came the respondents by their attorney and filed in the Clerk's office of said Court a certain Petition for Allowance of Appeal, in words and figures following, to wit:

*Petition for Appeal.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,  
State of Illinois, ss:*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Petition for Allowance of Appeal.

Board of Trade of the city of Chicago, Armour Grain Company, a corporation; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., respondents to the petition of E. H. Johnson, Trustee, filed in this court on the 10th of June, 1920, conceiving themselves to be aggrieved by the order and decree entered in this court on the 27th day of July, 1921, do hereby appeal from said order and decree to the United States Circuit Court of Appeals of the Seventh Circuit for the reasons specified in the assignment of errors filed herewith, and they pray that this appeal may be allowed, and that the transcript of the record, stipulations  
61 and other records herein be transmitted forthwith to the United States Circuit Court of Appeals for the Seventh Circuit.

BOARD OF TRADE OF THE CITY OF  
CHICAGO,  
ARMOUR GRAIN COMPANY,  
GEORGE A. HELLMAN,  
GEORGE S. BRIDGE,  
JOHN R. LEONARD,  
JAMES E. BENNETT,  
FRANK J. SAIBERT,  
FRANK F. THOMPSON,  
FRANK A. MILLER,  
By ROBBINS, TOWNLEY & WILD,  
*Their Solicitors.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And on, to wit, the 12th day of August, 1921, came the respondents by their attorneys and filed in the Clerk's office of said Court a certain Assignments of Error in words and figures following, to wit:

*Assignment of Error.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
Northern District of Illinois,  
State of Illinois, vs:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

*Assignments of Error.*

Now come the respondents, Board of Trade of the city of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., and file the following assignment of errors, upon which they rely for grounds for reversal on the appeal in the above entitled cause:

That the District Court erred—

1. In overruling and not sustaining the pleas to the jurisdiction of this court as set forth by these respondents, and in not dismissing said petition for want of jurisdiction:
2. In holding the membership of the bankrupt, Wilson F. Henderson, to be property within the meaning of the Bankrupt Act, and in also holding that said membership now belongs to the said E. H. Johnson as trustee in bankruptcy:
3. In adjudging that Wilson F. Henderson had full power and right on January 24, 1920, to transfer his said membership to any person eligible for membership in said Board:
4. In adjudging that on January 24, 1920, there were no claims or objections filed or pending, based upon outstanding, unadjusted or unsettled claims or contracts, and that said membership was not in any way impaired or forfeited;
5. In holding that upon the appointment of E. H. Johnson as Trustee of said bankrupt he became the owner and holder of said membership for the purpose of transfer and disposition thereof;

6. In adjudging that the claims against Lipsey & Company set out in the answer of said Board of Trade do not constitute outstanding, unadjusted or unsettled claims or contracts against said Henderson proper to be filed as objections to the transfer of his membership at any time;

7. In adjudging that no such claims or objections had been filed prior to the petition in bankruptcy of said Henderson on January 24, 1920;

8. In holding that the claims of the Board of Trade Clearing House did not constitute a valid claim or lien against the transfer of said membership;

9. In adjudging that after the adjudication of bankruptcy and the appointment of said trustee, said Henderson ceased to be a member of said Board of Trade and that his membership by operation of law passed into said trustee;

10. In adjudging that the proceedings for the suspension of said Henderson filed on June 17, 1921, were unavailing and invalid and did not constitute an impairment of said membership as against said trustee;

11. In adjudging that said membership of said Henderson now belongs to said trustee free and clear of any claims, objections, liens or otherwise under the rules of the Board of Trade of the City of Chicago, and that said trustee should hold same for sale and transfer for the benefit of said estate free and clear of any claims, objections, impairment or otherwise as against said Henderson;

12. In adjudging that the claims of these respondents were invalid as against the membership of said Henderson and the rights of said Johnson as trustee;

13. In entering the decree ordering that respondent, Board of Trade of the City of Chicago, disallow and refuse to recognize for any purpose as against said trustee the said claims mentioned in said answer of the respondent, Board of Trade, and in ordering that said Board of Trade shall not allow any other claims or proceedings as objections, liens or otherwise against said trustee upon or against membership of said Henderson;

14. In directing said Board of Trade to disregard and dismiss the proceedings of the respondent, Bridge & Leonard for the suspension of said Henderson or take no action in said proceedings which would impair or forfeit that membership;

15. In ordering the Board of Trade to permit the transfer of said membership upon the application of the trustee but of no other person;

16. In ordering said trustee to sell and dispose of said membership for the benefit of said estate;

17. In directing the Board of Trade to recognize, accept and enter on its records said E. H. Johnson, Trustee, as the owner of said membership of said Henderson;

18. In not dismissing the petition of the trustee.

ROBBINS, TOWNLEY & WILD,  
*Solicitors for said Respondents.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

And on to-wit: the 17th day of August, 1921, come the Board of Trade of the City of Chicago, a corporation, as principal and John Hill, Jr., as surety, and filed in the Clerk's office of said court, in said titled cause, a certain Bond, in words and figures following, to-wit:

Filed Aug. 17, 1921.

Know All Men By These Presents:

That we, the Board of Trade of the City of Chicago, a corporation, principal, and John Hill, Jr., as surety, are held and firmly bound to E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, Bankrupt, in the full and just sum of One Thousand (\$1,000) dollars, to be paid to said E. H. Johnson as Trustee, for which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents:

Sealed with our seals and dated this 16th day of August, A. D. 1921.

Whereas, lately and on the 27th day of July, 1921, the District Court of the United States for the Northern District of Illinois, Eastern Division, in a proceeding pending in said court in the matter of the bankruptcy of Wilson F. Henderson, and upon the petition filed by said Johnson as Trustee against said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., did enter final order granting the prayer of said petition, and said Board of Trade of the City of Chicago; Armour Grain Company; George A. Hellman; George S. Bridge and John R. Leonard, doing business as Bridge & Leonard; and James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., have obtained an order of appeal from said court to reverse said order in said proceeding, and a citation directed to the said Johnson as Trustee citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit thirty (30) days from and after the date of said citation. Now the condition of the above obligation is such that if the said Board of Trade of the City of Chicago, Armour Grain Company, George A. Hellman, George S. Bridge and John R. Leonard, doing business as Bridge & Leonard, and James E. Bennett, Frank J. Sai-

bert, Frank F. Thompson and Frank A. Miller, doing business as James E. Bennett & Co., shall duly prosecute their bill with effect, and answer all damages and costs if they shall fail to make  
 68 good their plea; then the above obligation to be void, else to remain in full force and effect.

[SEAL.]

BOARD OF TRADE OF THE CITY OF  
 CHICAGO,  
 By JOSEPH P. GRIFFIN,  
*President.*

Attest:

WALTER S. BLOWNEY,  
*Assistant Secretary.*

JOHN HILL, Jr.

[SEAL.]

O. K.

K. M. L.

O. K.

KRAFT, KRAFT & ERSKINE,  
*Attys. for Trustee.*

(Endorsed:) Filed Aug. 17, 1921. John H. R. Jamar, Clerk.

And afterwards, to wit, on the 12th day of August, 1921, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Kenesaw M. Landis, District Judge, appears the following entry, to wit:

*Order of Aug. 12, 1921.*

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON; Petitioner of E. H. JOHNSON, Trustee, Filed June 10, 1920.

Order.

The respondents in the above petition having filed their certain petition of appeal on assignments of error, now, on motion of counsel for respondents, it is

69 Ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the final order entered in the above entitled proceedings on the 27th day of July 1921, be and the same is hereby allowed, and that a certified tra



script of the record of the proceedings be forthwith transmitted to the said Circuit Court of Appeals; and it is

Further Ordered that the defendants file within ten (10) days from the entry of this order an appeal bond signed by the respondent, the Board of Trade of the City of Chicago, with a surety approved by this court in the usual form in the sum of One Thousand Dollars; that upon the giving of said appeal bond the same shall operate as a supersedeas.

Enter.

K. M. LANDIS,  
*Judge.*

*Notice of Præcipe.*

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, ss:*

in the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

Notice.

To Kraft, Kraft & Erskine, Solicitors for E. H. Johnson, Trustee,  
517 Harris Trust Building, Chicago, Illinois:

Please Take Notice that on Friday, August 12, 1921, at 10 a. m., we shall appear before John H. R. Jamar, Clerk of the United States District Court for the Northern District of Illinois, in room 650 of the Federal Building, Chicago, Illinois, and present a præcipe for a record to be filed in the United States Circuit Court of Appeals for the Seventh Judicial Circuit in connection with the petition to review and revise in the above entitled cause, a copy of which præcipe is hereto attached; at which time and place you may appear if you see fit.

August 11, 1921.

ROBBINS, TOWNLEY AND WILD,  
*Solicitors for Appellant.*

Received a copy of the above notice, together with a copy of said præcipe, this 11th day of August, 1921.

KRAFT, KRAFT & ERSKINE,  
*Solicitors for Appellees.*

*Præcipe for Transcript of Record.*

Filed Aug. 12, 1921.

UNITED STATES OF AMERICA,  
*State of Illinois, ss:*In the District Court of the United States for the Northern District  
of Illinois, Eastern Division.

Gen. No. 28256.

In the Matter of the Bankruptcy of WILSON F. HENDERSON.

To John H. R. Jamar, Clerk of the United States District Court for  
the Northern District of Illinois, Eastern Division:You will please prepare and certify a transcript of the following  
proceedings in the above entitled cause:

- (1) Order entered July 29, 1921, granting the prayer of the petition of E. H. Johnson, Trustee;
- (2) Petition for appeal;
- (3) Assignments of error;
- (4) Order allowing appeal;
- (5) Appeal Bond;

ROBBINS, TOWNLEY & WILD.  
*Solicitors for Appellants.*

(Endorsed:) Filed Aug. 12, 1921. John H. R. Jamar, Clerk.

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*Certificate of Clerk.*NORTHERN DISTRICT OF ILLINOIS,  
*Eastern Division, ss:*

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Præcipe filed in this Court in the cause entitled In the Matter of the Bankruptcy of Wilson F. Henderson, No. 28256, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 19th day of August A. D. 1921.

[SEAL.]

JOHN H. R. JAMAR,  
*Clerk.*

## 72 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from one to fifty-eight inclusive, contain a true copy of the printed petition to review and revise, the answer thereto and the exhibit to petition to review and revise in cause No. 3028, and that the foregoing printed pages numbered from one to fourteen, inclusive, contain a true copy of the printed record in cause No. 3034, both of the foregoing printed under my supervision and upon which causes No. 3028 and No. 3034 in the matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago, et al., Petitioners, appellants vs. E. H. Johnson, Trustee, etc., respondent, appellee, were heard and determined October Term, 1921, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fourteenth day of June, 1922.

[Seal of United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

73 At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit, on the fifth day of October, 1920, of the October Term, in the year of our Lord one thousand nine hundred and twenty, and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the twelfth day of August, 1921, in the October Term last aforesaid, there was filed in the office of the clerk of this court a certain notice, which said notice is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition for Review under Section 24b of the Bankrupt Act.

*Notice.*

To Kraft, Kraft & Erskine,  
Solicitors for E. H. Johnson, Trustee,  
517 Harris Trust Building,  
Chicago, Illinois:

You will please take notice that on August 12, 1921, at 10 a. m.,  
we shall appear before his Honor, Samuel Alschuler, in the  
74 room usually occupied by him as a court room in the Federal  
Building, Chicago, Illinois, and present a petition to review  
and revise in the above entitled cause, and ask that an order be entered in accordance therewith, a copy of which petition is hereto attached; at which time and place you may appear if you see fit.

August 11, 1921.

ROBBINS TOWNLEY AND WILD,  
*Solicitors for Appellants.*

Received a copy of the above notice, together with a copy of said petition, this 11th day of August, 1921.

KRAFT, KRAFT & ERSKINE,  
*Solicitors for Appellees.*

Endorsed: Filed Aug. 12, 1921. Edward M. Holloway, Clerk.

And afterwards, on the same day, to-wit: On the twelfth day of August, 1921, in the October Term aforesaid, the following proceedings were had and entered of record, to-wit:

Friday, August 12, 1921.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge.  
Edward M. Holloway, Clerk.

75 3028.

In the Matter of WILSON F. HENDERSON, Bankrupt; BOARD OF TRADE  
OF THE CITY OF CHICAGO, et al.

VS.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Petition to Review and Revise an Order of the District Court of the  
United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for petitioners in the above entitled cause, it  
is

Ordered that Board of Trade of the City of Chicago; Armour Grain  
Company; George A. Hellman; George S. Bridge and John R. Leonard,  
doing business as Bridge & Leonard; and James E. Bennett,  
Frank J. Saibert, Frank F. Thompson and Frank A. Miller, doing  
business as James E. Bennett & Co., have leave to file their petition  
to review and revise a certain order entered on the 27th day of July,  
1921, in the District Court of the United States for the Northern  
District of Illinois, Eastern Division, in the matter of the bankruptcy  
of Wilson F. Henderson, and upon the petition of E. H. Johnson,  
Trustee, and it is

Further Ordered that E. H. Johnson, Trustee, respondent to said  
petition, plead, answer and demur to said petition within 60 days  
from the date of this order; and it is

Further Ordered that no steps be taken to enforce said order pend-  
ing the disposition of said petition before this court.

76 And afterwards, on the same day, to-wit: On the twelfth  
day of August, 1921, in the October term last aforesaid, there  
was filed in the office of the clerk of this court a stipulation, which  
said stipulation is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson

Petition for Review under Section 24b of the Bankrupt Act.

*Stipulation.*

It is hereby stipulated between the parties in the above entitled cause by their respective counsel that upon the filing of the petition to review and revise in said court an order may be entered to that effect that no steps be taken to enforce said order of the lower court until the disposition of the petition to review and revise; and

It is further stipulated that no bond need be filed in by the petitioner in said cause.

Dated August 12, 1921.

ROBBINS, TOWNLEY & WILD,  
*Solicitors for Petitioners.*

KRAFT, KRAFT & ERSKINE,  
*Solicitors for Trustee in Bankruptcy.*

Endorsed: Filed Aug. 12, 1921. Edward M. Holloway, Clerk.

77 And afterwards, to-wit: On the thirteenth day of August, 1921, of the October Term last aforesaid, came the petitioner by their counsel, Mr. Henry S. Robbins, and filed in the office of the clerk of this court his appearance, which said appearance is in the following words and figures, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,  
October Term, 1920.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson  
Respondent.

The Clerk will enter my appearance as counsel for the petitioner

HENRY S. ROBBINS,  
1520-105 S. La Salle St.

Endorsed: Filed Aug. 13, 1921. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the fifteenth day of August, 1921, in the October Term last aforesaid, came the respondent, by his counsel, Mr. Robert N. Erskine and Mr. F. Wm. Kraft, and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to-wit:

78

United States Circuit Court of Appeals for the Seventh Circuit,  
October Term, 1920.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson,  
Respondent.

The Clerk will enter my appearance as counsel for the respondent.

ROBERT N. ERSKINE,  
F. WM. KRAFT,  
111 W. Monroe St., Chicago.

Central 3873.

Endorsed: Filed Aug. 15, 1921. Edward M. Holloway, Clerk.

And afterwards, to-wit: On the twenty-second day of August, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain exhibit to the petition to review and revise, which said exhibit appears on pages 6 to 51, inclusive, of the printed petition to review and revise in this cause certified herewith, and which is not copied here.

79

And afterwards, on the same day, to-wit: On the twenty-second day of August, 1921, there was filed in the office of the clerk of this court a certain stipulation, which said stipulation is in the following words and figures, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit.

3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.

vs.

E. H. JOHNSON, Trustee.

*Stipulation.*

It is hereby stipulated by the parties in the above entitled cause that the transcript of record of the proceedings in the District Court of the United States for the Northern District of Illinois, Eastern



Division, in the matter of the bankruptcy of Wilson F. Henderson, which is filed in this court as an exhibit, filed in this court on the 12th day of August, 1921, a certain order entered by said District Court on the 27th day of July, 1921, in the matter of the bankruptcy of Wilson F. Henderson, shall be taken and deemed as a complete transcript of the proceedings of said District Court in the proceeding upon which the above entitled appeal is prosecuted, and that an order to that effect may be entered by said Circuit Court of Appeals.

ROBBINS, TOWNLEY & WILD,  
*Solicitors for Petitioner.*  
KRAFT, KRAFT & ERSKINE,  
*Solicitor for Respondent.*

Endorsed: Filed Aug. 22, 1921. Edward M. Holloway, Clerk.

80 And afterwards, on the same day, to-wit: On the twenty-second day of August, 1921, the following further proceedings were had and entered of record, to-wit:

Monday, August 22, 1921.

Court met pursuant to adjournment.

Present:

Hon. Samuel Alschuler, Circuit Judge.  
Edward M. Holloway, Clerk.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered that the transcript of record of the proceedings in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the matter of the bankruptcy of Wilson F. Henderson, which is filed in this court as an exhibit, filed in this court on the 12th day of August 1921, a certain order entered by said District Court on the 27th day of July, 1921, in the matter of the bankruptcy of Wilson F. Henderson, shall be taken and deemed as a complete transcript of the proceedings of said District Court in the proceedings upon which the above entitled appeal is prosecuted.

81 And afterwards, to-wit: On the twenty-sixth day of August, 1921, there was filed in the office of the clerk of this court a certain answer to the petition to review and revise, which said answer appears on pages 52 to 58, inclusive, of the printed petition to review and revise certified herewith, and which is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the fourth day of October 1921, of the October Term in the year of our Lord one thousand nine hundred and twenty-one and of our Independence the one hundred and forty-sixth.

And afterwards, to-wit: On the fourth day of October, 1921, of the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 4, 1921.

Court opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge Presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Edward M. Holloway, Clerk.  
 John J. Bradley, Marshal.

66      **BD. OF TRADE, CHICAGO, ET AL. VS. E. H. JOHNSON, ETC.**

82      Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of the Board of Trade of the City of Chicago, a corporation, one of the petitioners in the first of the above entitled causes, and one of the appellants in the second above entitled cause, and all other parties to both of said causes consenting, it is

Ordered that the two above entitled causes be consolidated for hearing in this court.

And afterwards, to-wit: On the third day of January, 1922, of the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 3, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge Presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Hon. Claude Z. Luse, District Judge.

Edward M. Holloway, Clerk.

Robert R. Levy, Marshall.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

THE BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered that this cause be, and the same is hereby set down for hearing Thursday, January 26, 1922.

84 And afterwards, to wit: On the twenty-sixth day of January, 1922, of the October Term last aforesaid, the following further proceedings were had and entered of record, to wit:

Tuesday, January 26, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Robert R. Levy, Marshal.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the petition to review and revise an order

of the District Court of the United States for the Northern District of Illinois, Eastern Division, the answer thereto, the briefs of counsel and on oral arguments by Mr. Henry S. Robbins, counsel for petitioners, and by Mr. Robert N. Erskine, counsel for respondent, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the thirteenth day of May, 1922, there was filed in the office of the clerk of this court a certain opinion, which said opinion is in the following words and figures, to wit:

86 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1921, April Session, 1922.

No. 3028.

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, et al.,  
Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON,  
Respondent.

Petition for Review under Sec. 24b of the Bankruptcy Act.

No. 3034.

BOARD OF TRADE OF THE CITY OF CHICAGO, et al., Appellants,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of WILSON F. HENDERSON,  
Appellee.

Appeal from the District Court for the Northern District of Illinois,  
Eastern Division.

Before Alsop, J., Evans, and Page, Circuit Judges.

*Opinion by Page, Cir. J.*

The trustee in bankruptcy of the estate of one Henderson filed his petition in the United States District Court for the Eastern Division of the Northern District of Illinois, the court of adjudication, against the Board of Trade of the city of Chicago, herein called Board, and subsequently brought in as parties, by amendment, the creditors of Lipsey & Company, herein called Creditors, praying that the Board be required by some appropriate order to recognize the rights of the trustee, as such, in and to Henderson's membership.

On a rule to show cause, after pleas to the jurisdiction were overruled, a full answer by the Board was filed, and adopted by the Creditors. Other than as covered by the petition, as amended, and

the answers, there are no material facts, and on the pleadings the matter was heard and decided.

The Board was created by a special charter from the state of Illinois, and conducts an exchange in Chicago, where its members trade in farm and other products. It adopted the rules shown in the margin.\*

\*Rule IV, Sec. 7. When any member of this Association has been duly convicted of failure to comply with the terms of any business obligation or with the award of any Committee of Arbitration or Committee of Appeals, made in conformity with the rules and regulations of this Association, he shall be suspended from all privileges of the Board of Trade of the City of Chicago until all his outstanding obligations to members of the said Board of Trade shall have been settled, when he may, upon application to the Board of Directors, and upon stating under oath that he has settled all such outstanding obligations, be reinstated. Notice of all applications for reinstatement shall be posted upon a properly designated bulletin in the Exchange Hall for at least fifteen days prior to the hearing on such application by the Board of Directors. \* \* \*

Sec. 9. When any member of the Association shall be guilty of a willful violation of any business contract or obligation and shall neglect or refuse to equitably and satisfactorily adjust and settle the same, or when any member shall willfully neglect or refuse to comply promptly with the award of any committee of arbitration or committee of appeals, rendered in conformity with the rules, regulations and by-laws of the Association, he shall be suspended from all the privileges of this Association until such contract or obligation is satisfactorily adjusted and settled, or such award is performed or complied with. \* \* \*

Sec. 17. No member shall be censured, suspended or expelled under this Rule, without an examination of the charges against him by the Board of Directors, nor without having an opportunity to be heard in his own defense. No examination shall take place until notice has been served on the accused member, or his firm, accompanied by a copy of the charges against him or them, in writing. Such notice may be served upon the accused personally, by the Secretary or any of his assistants, or it may be left at or mailed to the accused at his ordinary place of business or residence; in either of which cases the notice shall be considered sufficient, and the examination may proceed whether the accused is present or not.

Rule X, Sec. 2. Every member shall be entitled to transfer his membership when he has paid all assessments due, and has against him no outstanding unadjusted or unsettled claims or contracts held by members of this Association, and said membership is not in any way impaired or forfeited, upon the payment of two hundred and fifty dollars, to any person eligible to membership who may be approved for membership by the Board of Directors, after due notice by posting, as provided in Section 1 of this rule. The membership of a deceased member shall be transferable in like manner by his legal representative without the payment of the transfer fee. Prior to the transfer of any membership, application for such transfer shall be posted upon the bulletin of the exchange for at least ten days when, if no objection is made, it shall be assumed the member has no outstanding claims against him. \* \* \*

Rule XXII, Sec. 11. No member shall give the name of a corporation as his principal on any trade or contract in any of the commodities bought and sold on this exchange, as enumerated in Sections 4 and 5 of Rule XIV, unless two executive officers of such corporation, bona fide and substantial stockholders, are members of this Association in good standing. In case the said corporation is accepted as a party to such trade or contract and defaults in the execution of the same, or fails to comply with the terms of any business obligation made in conformity with the rules and regulations of this Association on which the said corporation has become liable, the said executive officers, and such other officers and managers of such corporation as are members of this Association, shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of any business obligation of their own.

88 Memberships are perpetual and every member is entitled to transfer his membership if he has paid all dues, etc., and his membership is not in any way impaired or forfeited, provided he has no "unsettled claims or contracts held by members of the Board." Application for transfer must be posted ten days, when, if no objection is made, it is assumed the member has no outstanding claims against him.

Henderson, on the date of adjudication, February 24, 1920, had filed an application for transfer, the ten days' time had run, objections had been filed and disposed of, and he was in good standing, free to transfer his membership.

The Board's brief says that corporations are not admitted to membership, but to permit them to transact business on the Board it has adopted the rule that no member shall give the name of a corporation as his principal on a trade, unless two executive officers thereof, who are bona fide and substantial stockholders, are members of the Board, and in case the corporation defaults on any trade or obligation, then said executive officers and such other officers and managers of the corporation as are members of the Board shall be subject to be disciplined in the same manner as they are subject to be disciplined for failure to comply with the terms of their own business obligations. Under the rules, no disciplinary proceedings of any kind can be taken without notice and an opportunity to be heard. There is no rule by which the sale of a membership may be forced, and the Illinois courts hold that it cannot be reached or sold on execution. (*Barclay v. Smith*, 107 Ill. 349.)

Whether Henderson traded on the Board's exchange for his personal account does not appear, but he did not leave personal debts to other members growing out of trades on the exchange. Being an executive officer of Lipsey & Company, a corporation, he did make trades on the exchange for that corporation. Lipsey & Company is insolvent, but not in bankruptcy, and its creditors, who became such through unsettled trades made for it on the exchange by Henderson are here, as the Board's co-appellants, contesting the trustee's rights.

Two jurisdictional questions are raised: first, that the matter in dispute presents a "controversy" within the meaning of Section 23\* of the Bankruptcy Act, cognizable only in a plenary suit in a jurisdiction designated in said Section 23; second,

\*Sec. 23. (a) The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner as to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants. (b) Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section sixty, subdivision b; section sixty-seven, subdivision c; and section seventy, subdivision c. (c) The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits of the offenses enumerated in this Act.



that the disposition of a membership is a matter wholly within the internal regulatory powers of the Board, over which no court has any power or jurisdiction. A third contention is made, viz., that a membership on the Board is not property that passes in bankruptcy.

(1). Every district court is a bankruptcy court (Item 8, Sec. 1, Bankruptcy Act), and has such jurisdiction at law and in equity as will enable it to exercise original jurisdiction in bankruptcy proceedings, to do many things, among which are:

"(6) bring in and substitute additional parties in proceedings in bankruptcy when necessary for the determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; \* \* \* (15) make such orders, issue such process and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act." (Sec. 2, Bankruptcy Act.)

The words "otherwise provided" refer to Section 23 of the Bankruptcy Act (*Bardes v. Hawarden Bank*, 178 U. S. 524 (535)).

Those are really venue sections, in no sense limiting the very broad jurisdiction of the bankruptcy court, save only in regard to controversies to recover property or establish property rights between the trustee and parties who are strangers to the bankruptcy proceeding and who (1) have possession of the property, claiming ownership thereof or a lien thereon, or (2) who deny owing any money claimed by the trustee. In all such cases, not within the exceptions of Section 23*b*, suits after bankruptcy may be brought only in those courts where they might have been brought had bankruptcy not intervened. That means only that the jurisdiction and venue in the Federal courts do not depend upon the character of the controversy, but upon the amount in controversy and the residence of the parties, as provided in the Judiciary Act.

Even if there is here a controversy of the character that required that the action shall be brought where it must have been brought if bankruptcy had not intervened, we are of opinion that it was properly brought in the court of adjudication, because, as shown by the pleadings, the jurisdictional amount is sufficient and the record and undenied statements made in open court show that at the time the bankruptcy proceedings were commenced the Board was resident in the district and division of the court of adjudication and Henderson was a citizen of the state of Florida.

Section 23*b* makes four exceptions to Section 23*a* as to where actions may be brought by the trustee, viz.,—with consent of the proposed defendant, and also under the circumstances stated in Sections 60*b*, 67*e* and 70*e*, the trustee may bring actions in the district court or in a state court. (*Bardes v. Hawarden Bank*, 178 U. S. 524; *Babbitt v. Dutcher*, 216 U. S. 102; *Weidhorn v. Levy*, 253 U. S. 273). It should be noted that when *Bardes v. Hawarden Bank* was decided Sections 23*a* and 23*b* of the Bankruptcy Act of 1898

were in force, and the words "circuit courts" were found in Section 23a, and the only exception in Section 23b was as to cases where consent of the proposed defendant was had as to the place where the suit was brought. When *Babbitt v. Dutcher* was decided, Section 23b had been amended so as to add, as exceptions to the general provision of Section 23b, suits arising under the circumstances stated in Sections 60b and 67e. When *Weidhorn v. Levy* was decided, Section 23a had been amended by substituting the word "district" for the word "circuit," and Section 23b by adding as an exception cases arising under Section 70e. Section 23a and 23b now read as amended in 1910.

If the Creditors named had any right whatever, it must be upon the theory that there was, by reason of the acceptance of the membership under the rules, some sort of hypothecation of the membership or some lien created on it in favor of creditors. This can

only mean that the creditors must claim under the conditions covered by Section 70e.\* If, under the rules of the Board, there is, in favor of the Board, any right or lien upon a membership, it is merely the right to prevent the transfer for the purpose of compelling the payment of the debts of objecting creditors by suspension or some sort of discipline of the member. It is clear from the facts that any such hypothecation, and any semblance of a lien created thereby, either had been or could have been avoided by Henderson at the time of the petition in bankruptcy and adjudication, because the facts show that the utmost right that the Creditors had, if they in fact were creditors under the provisions of the rules, was to object to a transfer after the posting of the application to make a transfer. There was no such objection within the ten days, nor prior to passing of the title from Henderson to the trustee, if it did pass.

The rules show that when an application has been posted ten days, if no objection is made, it is assumed that there are no outstanding claims, and the right to transfer becomes absolute without action by the Board. There is no pretense that any right exists in either the Board or any creditor after transfer of a membership. It necessarily follows that any claim under any rule made by the Board, or by any creditor of Henderson, under the circumstances here shown, could have been defeated by Henderson after sale, and consequently action by the trustee would lie in the court of adjudication under Sections 23b and 70e.

At the time the operation of the law passed the title to the trustee, Henderson could have transferred all his rights. No creditor had any right except to object before transfer. The Board could only

\*Sec. 70e. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as herein-before defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

discipline its members. When the law passed his rights to the trustee, Henderson ceased to be a member, and was of course not thereafter subject to discipline by the Board.

2. From the facts and the foregoing discussion, it needs no further discussion to show that whether there was any other jurisdiction or not, there existed that jurisdiction that appellants admit does exist, viz.,

“Necessarily the District Court has in cases of this kind jurisdiction to ascertain these facts” (whether the adverse claim is real or merely colorable, etc.) “and if in a given case this question of fact is found against the trustee, the court may go no further.”

The court proceeded under its jurisdiction for the purpose of ascertaining the facts, but instead of finding against the trustee it found, as it must have found from the undisputed facts, that any claim of appellants was without substance and colorable only.

3. Under the decisions of this court, and numerous decisions of the Supreme Court, such a membership is property and passes to the trustee. (*Hyde v. Woods*, 94 U. S. 523; *Page v. Edmunds*, 187 U. S. 596; *Rogers v. Hennepin County*, 240 U. S. 184; *Anderson v. Durr*, — U. S. — (opinion dated Nov. 7, 1921); *Board of Trade v. Weston*, 243 Fed. 332.)

4. The claim that the action of the court was an interference with the Board's right to control its internal affairs is without merit, because, while that may be true as a general proposition, yet it has several exceptions. One of them will be fully apparent by comparing *Barclay v. Smith*, supra, with *Weaver v. Fisher*, 110 Ill. 146, 152. In the latter case the court explicitly repudiates the construction placed upon the former case by appellants. Whether a rule or by-law is valid, and the proper construction thereof, are matters for the courts. While a rule or by-law by itself may be valid, yet it is possible that a set of rules or by-laws may produce such inequitable results that they may, as a whole, be illegal. For instance, in several cases where it was shown that boards of trade had rules similar to those in evidence here, and also had other by-laws expressly providing for liens and for a sale of the membership so as to save the sale value of the membership for the lienholders, the member and his creditors, the Supreme Court recognized such rules as valid. (*Hyde v. Woods*, 94 U. S. 525; *Page v. Edmunds*, 187 U. S. 596; *Anderson v. Durr*, — U. S. —, opinion dated Nov. 7, 1921). But in the case at bar the only power in the creditors was to obstruct a sale by objecting thereto. The only power of the Board was to destroy the sale value by suspension of a member or other disciplinary action, thereby preventing a sale. The facts show that there was no substantial right to be preserved or worked out under the Board's rules. On the contrary, any action taken, without the consent of Henderson, the bankrupt,—and he could give none—would merely destroy the sale value. Such results the District Court had the power to prevent.

The complaint that this was a summary proceedings is without merit. While the proceeding is summary in form, the whole of the facts are shown in the petition and answers. Under such circumstances, the form of action is immaterial. (Re Rockford Product & Sales Co., 275 Fed. 811; Re Raphael, 192 Fed. 874).

The decree of the court below, sustaining the trustee's petition, is affirmed.

A true Copy.

Teste:

\_\_\_\_\_,  
*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

94 And afterwards, on the same day, to-wit; On the thirteenth day of May, 1922, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN Company, George A. Hellman, George S. Bridge and John R. Leonard, Doing Business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Company,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the petition to review and revise an order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on July 29, 1921, and the answer thereto, and was argued by counsel.

95 On consideration whereof, It is now here ordered, adjudged and decreed by this court that the said order of the said

District Court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the second day of June, 1922, of the October Term last aforesaid, the following further proceedings were had and entered of record:

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Edward M. Holloway, Clerk.  
 Robert R. Levy, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

96

3028.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

VS.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for petitioners, it is ordered that the mandate in this cause be, and the same is hereby stayed until the further order of court—counsel for respondent present and consenting thereto.

97 & 98 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from one to twenty-four, inclusive, contain a true copy of the proceeding had and papers filed (except briefs of counsel and stipulations fixing time for filing same) in the following entitled cause: In the Matter of Wilson F. Henderson, Bankrupt; Board of Trade of the City of Chicago, et al., Petitioners, vs. E. H. Johnson, Trustee in Bankruptcy, etc., Respondent, No. 3028, October Term, 1921, as the same remains upon the files and records

of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July, 1922.

[Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

99 At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States court-room, in the city of Chicago, in said Seventh Circuit on the fifth day of October, 1920, of the October term, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the twenty-fifth day of August, 1921, in the October Term last aforesaid, came the appellants, by their counsel, Mr. Henry S. Robbins, and filed in the office of the clerk of this court his appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Appellants,

vs.

E. H. JOHNSON, Trustee, etc., Appellee.

The Clerk will enter my appearance as Counsel for the Appellant

HENRY S. ROBBINS,  
1520-105 S. La Salle St., Chicago, Ill.

Endorsed: Filed Aug. 25, 1921. Edward M. Holloway, Clerk.

100 And afterwards, to-wit: On the twenty-seventh day of August, 1921, of the October Term aforesaid, came the appellee by his counsel, Mr. F. William Kraft and Mr. Robert N. Erskine and filed in the office of the clerk of this court their appearance which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1920.

No. 3034.

In re WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Appellants,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson, Appellee.

The Clerk will enter my appearance as Counsel for the Appellee.

F. WILLIAM KRAFT AND  
ROBERT N. ERSKINE,

517-520 Harris Trust Building, Chicago, Illinois.

Endorsed: Filed Aug. 27, 1921. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States courtroom, in the city of Chicago, in said Seventh Circuit, on the fourth day of October, 1921, of the October term, in the year of our Lord one thousand nine hundred and twenty-one, and of our Independence the one hundred and forty-sixth.

101 And afterwards, to wit: On the twenty-sixth day of January, 1922, in the October Term aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 26, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier:

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Robert R. Levy, Marshal.



Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans,  
Circuit Judge; Hon. George T. Page, Circuit Judge.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

vs.

E. H. JOHNSON, Trustee, etc.

Appeal from the District Court of the United States for the Northern  
District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause  
now comes on to be heard on the printed record and briefs of counsel  
and on oral arguments by Mr. Henry S. Robbins, counsel for  
102 appellants, and by Mr. Robert N. Erskine, counsel for ap-  
pellee, and the court having heard the same takes this matter  
under advisement.

And afterwards, to-wit: On the thirteenth day of May, 1922, in the  
October Term last aforesaid, there was filed in the office of the clerk  
of this court a certain opinion, which said opinion is not copied here,  
but appears in the transcript of the record in cause Number 3028 in  
the matter of William F. Henderson, Bankrupt, certified herewith.

And afterwards, on the same day, to-wit: On the thirteenth day  
of May, 1922, in the October Term last aforesaid, the following  
further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Before Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge; Hon. George T. Page, Circuit Judge.

103 3034.

In the Matter of WILSON F. HENDERSON, Brankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO, ARMOUR GRAIN Company, George A. Hellman, George S. Bridge, and John R. Leonard, Doing Business as Bridge & Leonard, and James E. Bennett, Frank J. Saibert, Frank F. Thompson, and Frank A. Miller, Doing Business as James E. Bennett & Company,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal form the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to-wit: On the second day of June, 1922, in the October Term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Court met pursuant to adjournment and was opened by proclamation of crier:

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Edward M. Holloway, Clerk.  
 Robert R. Levy, Marshal.

104 Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

3034.

In the Matter of WILSON F. HENDERSON, Bankrupt.

BOARD OF TRADE OF THE CITY OF CHICAGO et al.

VS.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellants, it is ordered that the mandate in this cause be, and the same is hereby stayed until the further order of court—counsel for appellee present and consenting thereto.

105 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from One to Six inclusive, contain a true copy of the proceedings had and papers filed in the following entitled cause In the Matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago, Appellants, vs. E. H. Johnson, Trustee in Bankruptcy, etc., Appellee, No. 3034, October Term, 1921, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 14th day of July 1922.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

106 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which Board of Trade of the City of Chicago et al., are appellants, and E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson,

is appellee, No. 3034, and entitled In the matter of Wilson F. Henderson, Bankrupt, Board of Trade of the City of Chicago et al. vs. E. H. Johnson, Trustee in Bankruptcy of Wilson F. Henderson, No. 3028, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from and petition to review and revise an order of the District Court of the United States for the Northern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

*Clerk of the Supreme Court of the United States.*

108 In the Supreme Court of the United States, October Term, 1922.

BOARD OF TRADE OF THE CITY OF CHICAGO et al., Petitioners,

vs.

E. H. JOHNSON, Trustee in Bankruptcy of Wilson F. Henderson,  
Respondent.

*Stipulation.*

It is hereby stipulated by the parties to the above entitled cause that the record already on file in the Supreme Court in said cause may be taken as a return to the writ of certiorari issued from said court, and that the Clerk may send up a certified copy of this stipulation as a return to said certiorari.

HENRY S. ROBBINS,

*Solicitor for Petitioners.*

ROBERT N. ERSKINE,

F. WM. KRAFT,

*Solicitors for Respondent.*

Endorsed: Filed Oct. 30, 1922. Edward M. Holloway, Clerk.

UNITED STATES OF AMERICA,

*Seventh Circuit, ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the

transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Board of Trade of the City of Chicago, et al., appellants, vs. E. H. Johnson, Trustee, etc., appellee, is a full, true and complete transcript of the record upon which said cause was heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirtieth day of October, A. D. 1922.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

[Endorsed:] 3028, 3034. File No. 29,063. Supreme Court of the United States, No. 513, October Term, 1922. Board of Trade of the City of Chicago et al. vs. E. H. Johnson, Trustee in Bankruptcy, etc. Writ of Certiorari. Filed Oct. 30, 1922. Edward M. Holloway, Clerk.

109 [Endorsed:] File No. 29,063. Supreme Court U. S., October Term, 1922. Term No. 513. Board of Trade of the City of Chicago et al., Petitioners, vs. E. H. Johnson, Trustee in Bankruptcy, etc. Writ of Certiorari and Return. Filed Nov. 2, 1922.